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In the
Supreme Court of the United States

OCTOBER TERM, 1967.

No. 317

ANTERO PEREZ RODRIGUEZ,
PETITIONER,

v.

ALCOA STEAMSHIP COMPANY, INC.,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petitioner, by his counsel, Harvey B. Nachman, respectfully petitions this Honorable Court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit, which reversed the decree in favor of petitioner and remanded the case to the District of Puerto Rico with directions to dismiss the libel, and, in support of his petition does show:

1. The opinion of the United States Court of Appeals for the First Circuit has been reported at 376 F.2d 35 and

a copy of said opinion is appended hereto at pages 27 to 34 *infra*; the opinions of the United States District Court for the District of Puerto Rico on the exceptive allegations are contained in the certified record at pages 8 through 10 and at pages 19 through 21; the findings of fact, conclusions of law and decree on the merits, after the case was submitted on a stipulated set of facts, are contained in the certified record at pages 25 through 27.

2. The judgment of the United States Court of Appeals for the First Circuit reversing the judgment of the District Court of Puerto Rico and remanding with directions to enter a judgment of dismissal, is dated April 20, 1967.

Jurisdiction

3. The jurisdiction of this Honorable Court to review by way of writ of certiorari is based on the United States Code, Title 28, §§ 1254 (1) and 2101 (c), and Supreme Court Rules, Rule 19 Subsection 1 (b).

Questions Presented

A. Is a Longshoreman Injured in Navigable Waters of Puerto Rico on an Unseaworthy Vessel Owned by His Employer Barred from Recovery for Violation of His Federally Created Maritime Rights Merely Because the Employer Is Insured Under the Workmen's Accident Compensation Act of Puerto Rico?

This question comprises several subsidiary questions of critical importance in the administration of the admiralty law:

(1) Whether a political subdivision of the United States has the power to enact legislation inconsistent with the federal maritime law in view of the constitutional require-

ments of uniform application of the maritime law and that all citizens are entitled to the equal protection of the laws;

(2) Whether the legislation in question is in harmony with the maritime law, as concluded by the United States District Judges for the District of Puerto Rico, or whether there is a conflict between the legislation and the maritime law, as decided by the Court of Appeals; and

(3) Whether Congress, which is not permitted to dilute a longshoreman's rights under these circumstances, has the power to delegate such authority to the legislature of Puerto Rico.

B. May a Puerto Rican Longshoreman Injured on an Unseaworthy Vessel in Navigable Waters be Deprived of His Maritime Lien and In Rem Remedy, If the Shipowner Is Personally Exonerated from Liability by Local Statute?

5. The constitutional provisions involved are:

United States Constitution, Article III, § 2:

> "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State,

or the Citizens thereof, and foreign States, Citizens or Subjects."

Amendment XIV, § 1:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article IV, § 2, Clause 1.:

> "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

The statutes involved are:

Public Law 803 of March 4, 1927, c. 509, § 5, 44 Stat. 1426, 33 U.S. Code, § 905:

> "The liability of an employer prescribed in section 904 of this title shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured em-

ployee, or his legal representative in case death results from the injury, may elect to claim compensation under this chapter, or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee."

Public Law 368 of March 2, 1917, c. 145, § 2, 39 Stat. 951, Title 48 U.S.C.A. § 737, amended in Public Law 362 of August 5, 1947, c. 490, § 7, 61 Stat. 772, 48 U.S.C.A. § 737, continued in effect by Public Law 600 of July 3, 1950, c. 446, § 5 (1), 64 Stat. 320, 48 U.S.C.A. § 737:

"The rights, privileges, and immunities of citizens of the United States shall be respected in Puerto Rico to the same extent as though Puerto Rico were a State of the Union and subject to the provisions of paragraph 1 of section 2 of article IV of the Constitution of the United States."

Law No. 45 of 1935, Laws of Puerto Rico, p. 250, § 20, Laws of Puerto Rico Annotated, Title 11, § 21:

"When an employer insures his workmen or employees in accordance with this chapter, the right herein established to obtain compensation shall be the only remedy against the employer; but in case of accident to, or disease or death of, the workmen or employees not entitled to compensation under this chapter, the liability of the employer is, and shall continue to be, the same as if this chapter did not exist."

Statement of the Case

On May 14, 1963 Antero Perez Rodriguez was employed as a longshoreman by the Alcoa Steamship Company to discharge its vessel, the SS ALCOA ROAMER, while said vessel was in the port of San Juan, Puerto Rico. The Alcoa Steamship Company is a corporation organized in a jurisdiction outside of the Commonwealth of Puerto Rico but had registered to do business in the Commonwealth of Puerto Rico. The vessel was a United States registered vessel.

After Hold No. 1 of said vessel had been opened, the libellant proceeded down the ladder in the forward section of said hatch. As he commenced descending the ladder, the bolts connecting the top section of the ladder either broke or parted, causing the ladder to swing in an arc, outward and downward from the hatch wall. As the ladder swung, the libellant was precipitated from the ladder in the tween deck into the lower hold of the vessel.

As a result of the occurrence, the libellant sustained severe personal injuries consisting of, among other conditions, compression fractures of the bodies of the 11th and 12th dorsal vertebrae.

Suit was filed in the United States District Court for the District of Puerto Rico on the 26th day of December, 1963, in admiralty, by way of a libel *in rem* against the vessel, the SS ALCOA ROAMER. (R. 5-7). The Alcoa Steamship Company filed a claim of ownership and posted a bond for the release of the vessel. The vessel was released on a letter of undertaking.

After the vessel was released, the claimant filed exceptive allegations to the libel, based on the Puerto Rico Workmen's Accident Compensation Act. (R. 7-8). The exceptive allegations were denied by the District Court on July 9, 1964, the Court relying upon the decision of this

Honorable Court in *Reed* v. *Steamship Yaka*, 1963, 373 U.S. 410, 83 S. Ct. 1349, 10 L. Ed. 2d 448. (R. 8-10). The claimant petitioned for a rehearing on the exceptive allegations and after extensive briefing and argument, the Court adhered to its original decision in an order dated April 15, 1965. (R. 19-21). The claimant answered and the case was then set for trial.

There were no disputed facts and the case was submitted to the court on a stipulation which included not only the manner of the happening of the occurrence, but also the reasonable amount of damages. (R. 23-25). The District Judge concluded that the vessel was unseaworthy,[1] that the action was not barred by the exclusive remedy provision of the Puerto Rico compensation statute, and entered a decree in favor of petitioner. (R. 26-27).

The United States Court of Appeals for the First Circuit reversed, ruling that Section 20 of the Puerto Rico Workmen's Accident Compensation Act, 11 L.P.R.A. § 21, barred the libellant from recovery. In so ruling, the Court of Appeals made no reference to the decisions of all other federal courts which reached the diametrically opposite result.[2] Nor did it allude to the opinion of the District Court of Puerto Rico in another case, in which it was held that this same section of the Puerto Rico statute was, "not

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[1] The vessel was, it is contended, unseaworthy as a matter of law. *Mahnich* v. *Southern Steamship Co.*, 1944, 321 U.S. 96, 64 S. Ct. 455, 88 L. Ed. 561; *Lawlor* v. *Socony Vacuum Oil Company*, 2 Cir. 1960, 275 F.2d 599, *cert. denied*, 363 U.S. 844, 80 S. Ct. 1614, 4 1960, 275 F.2d 599, cert. denied, 363 U.S. 844, 80 S. Ct. 1614, 4 L. Ed. 2d, 1728; *Brown* v. *Duncan*, E. D. La. 1961, 199 F. Supp. 399. The respondent has never contested this finding.

[2] *Grace Lines, Inc.* v. *Kanton*, 9 Cir. 1966, 366 F.2d 510; *Pacific Inland Navigation Company* v. *Course*, 9 Cir. 1966, 368 F.2d 540; *Biggs* v. *Norfolk Dredging Company*, 4 Cir. 1966, 360 F.2d 360; *Scopaz* v. *S.S. Santa Luisa*, 2 Cir. 1967, 372 F.2d 403; *Carroll* v. *S.S. Santa Rosa*, S.D.N.Y. 1966, 257 F. Supp. 688; *Miculka* v. *American Mail Lines, Ltd.*, D. Or. 1964, 229 F. Supp. 665; *Hertel* v. *American Export Lines, Inc.*, S.D.N.Y. 1964, 225 F. Supp. 703.

in conflict with the rules of admiralty and the general maritime law."[3] This Court's authoritative pronouncement in *Reed* v. *Steamship Yaka*, 1963, 373 U.S. 410, 83 S. Ct. 1349, 10 L. Ed. 2d 448, was distinguished as being limited to the interpretation of the effect of a section of the Federal Longshoremen's and Harborworkers' Compensation Act, 33 U.S.C.A. 905, upon the obligation of a shipowner-employer to provide a seaworthy vessel and not binding in the interpretation of the local statute with respect to the same legal obligation.

Relying on a line of its own prior decisions, the Court of Appeals reasoned that although a maritime worker could sue a third party under the admiralty law[4] without violating the spirit of the local compensation statute which applied to maritime workers,[5] he could not sue his own employer because the exclusive remedy provision of the statute.[6] It concluded that the Puerto Rico Workmen's Compensation Act has, "within the area of its applicability, displaced the remedies of the maritime law."

In spite of the statutory language that "the right herein established to obtain compensation shall be the only remedy against the employer", the Court of Appeals has followed this Court's holding in *Ryan Stevedoring Co.* v. *Pan Atlantic S.S. Corp.*, 1956, 350 U.S. 85, 76 S. Ct. 232, 100 L. Ed. 133, permitting the shipowner to bring an action over and recover against the stevedore-employer.[7] This Court's

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[3] *Santiago* v. *Hermanos*, D.P.R. 1966, 255 F. Supp. 932, 935-936.

[4] *Guerrido* v. *Alcoa Steamship Co.*, 1 Cir. 1956, 234 F.2d 349; *Waterman Steamship Corporation* v. *Rodriguez*, 1 Cir. 1961, 290 F.2d 175.

[5] *Lastra* v. *New York & Porto Rico S.S. Co.*, C.C.A. 1st, 1924, 2 F.2d 812.

[6] *Fonseca* v. *Prann*, 1 Cir. 1960, 282 F.2d 153, *cert. denied*, 365 U.S. 860, 81 S. Ct. 826, 5 L. Ed. 2d 822.

[7] *Compania Transatlantica Espanola S.A.* v. *Melendez Torres*, 1 Cir. 1966, 358 F.2d 209; *Bordas & Company* v. *Pizarro Serrano*, 1 Cir. 1963, 314 F.2d 291; *Hudson Steamship Company* v. *Ayala Colon*, 1 Cir. 1963, 314 F.2d 44.

reliance in *Reed, supra,* on the *Ryan* doctrine was argued to the Court of Appeals, yet the opinion omits any reference to the other line of decision of the same Court of Appeals which uphold indemnity recovery under the *Ryan* doctrine, despite the exclusivity granted by the local statute.

The Court of Appeals also held that the exclusive remedy provision of the compensation statute, not only exonerated the shipowner-employer from its liability, but also extinguished the petitioner's maritime lien and his *in rem* remedy.

On the same day that the Court of Appeals rendered its decision below granting the legislature of Puerto Rico the power to interfere with the proper uniform application of the maritime law, it decided another case involving the same statute and held that the interference with the maritime law could not be upheld where the contract of employment was not entered into in Puerto Rico. *Alcoa Steamship Company, Inc.* v. *Velez,* 1 Cir. 1967, ... F.2d , reprinted herein at pages 35 to 41.

Argument

A. In Deciding That Puerto Rico Could Deprive the Libellant of a Substantial Admiralty Right as Defined by Controlling Interpretative Decisions of This Court, the Court of Appeals for the First Circuit Has Issued a Decision on an Important Question of Federal Admiralty and Maritime Law That Is Irreconcilable with the Constitution of the United States, Authoritative Decisions of This Court and Decisions of the Several Courts of Appeals and District Courts of the United States.

The decision below is a radical departure from two recent decisions of this Court in which the exclusive remedy

provisions of the Federal Longshoremen's and Harbor Workers' Compensation Act[8] were held to be no bar to a longshoreman's recovery for unseaworthiness against his employer-shipowner.

In *Reed* v. *Steamship Yaka*, 1963, 373 U.S. 410, 415-416, 83 S. Ct. 1349, 1353, 10 L. Ed. 2d 448, the Court said:

> "In the light of this whole body of law, statutory and decisional, only blind adherence to the superficial meaning of a statute could prompt us to ignore the fact that Pan-Atlantic was not only an employer of longshoremen but was also a bareboat charterer and operator of a ship and, as such, was charged with the traditional, absolute, and nondelegable obligation of seaworthiness which it should not be permitted to avoid. We have previously said that the Longshoremen's Act 'must be liberally construed in conformance with its purpose, and in a way which avoids harsh and incongruous results'*. We think it would produce a harsh and incongruous result, one out of keeping with the dominant intent of Congress to help longshoremen,** to distinguish between liability to longshoremen injured under precisely the same circumstances because some drawn their pay directly from a shipowner and others from a stevedoring company doing the ship's service. Petitioner's need for protection for unseaworthiness was neither more nor less than that of a longshoreman working for a stevedoring company. As we said in a slightly different factual context, 'All were subjected to the same dan-

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* *Voris* v. *Eikel*, 346 U.S. 328, 333, 74 S. Ct. 88, 92, 98 L. Ed. 5 (1953).

** See S. Rep. No. 973, 69th Cong., 1st Sess. (1926), H.R. Rep. No. 1190, 69th Cong., 1st Sess.. (1926).

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[8] 33 U.S.C.A. § 905.

ger. All were entitled to like treatment under the law.'*** We conclude that petitioner was not barred by the Longshoremen's Act from relying on Pan-Atlantic's liability as a shipowner for the Yaka's unseaworthiness in order to support his libel *in rem* against the vessel."

*** *Pope & Talbot, Inc.* v. *Hawn*, 346 U.S. 406, 413, 74 S. Ct. 202, 207, 98 L. Ed. 143 (1953).

On May 8 of this year, the issue was reexamined in *Jackson* v. *Lykes Bros. Steamship Co.*, 1967, ... U.S. ..., 87 S. Ct. 1419, 18 L. Ed. 2d 488. The factual situation differed slightly, in that Lykes was the shipowner-employer, whereas in *Reed,* the employer was a bareboat charterer. The *Jackson* action was filed as a suit at law and *Reed* proceeded by way of a libel *in rem.* In reaffirming the *Reed* result, the Court said:

"In this case as in *Yaka,* the fact that the longshoreman was hired directly by the owner instead of by the independent stevedore company makes no difference as to the liability of the ship or its owner. In the final analysis the contention here against recovery as in *Yaka* is that the longshoreman who is employed to work on a ship by an independent stevedore company instead of the shipowner can recover for the unseaworthiness of the vessel, but a longshoreman hired by the same shipowner to do exactly the same kind of work on an unseaworthy ship cannot recover. We reject this contention as we did before. We cannot accept such a construction of the Longshoremen's Act—an Act designed to provide equal justice to every longshoreman similarly situated. We cannot hold that Congress intended any such incongruous, absurd, and unjust result in passing this congressional Act.

(87 S. Ct. at 1422, footnote omitted.)

The decision below antedated *Jackson*, but the Court of Appeals held *Reed* inapplicable because the governing compensation statute was different. Since 1924, the Court of Appeals has held that the Puerto Rico Workmen's Accident Compensation Act[9] is applicable to maritime workers in the navigable waters of Puerto Rico,[10] a holding never reviewed by this Court. In reversing the District Court's construction of the Puerto Rico legislation, the Court of Appeals engendered a distinction in rights and remedies of one group of American longshoremen that creates unequal treatment and unequal justice. Not only are some Puerto Rican longshoremen deprived of their federally created maritime rights, but some Puerto Rican stevedore employers may ultimately be liable to their employees for injuries whereas those employers who are also shipowners can avoid this obligation.

By its decision, the Court of Appeals for the First Circuit has destroyed the uniformity of the admiralty and maritime law in this field that had been accepted by the lower federal courts, all of which had recognized the longshoreman's right to recover for injuries sustained under similar fact situations.

Grace Lines, Inc. v. *Kanton*, 9 Cir. 1966, 366 F.2d 510;
Biggs v. *Norfolk Dredging Company*, 4 Cir. 1966, 360 F.2d 360;
Scopaz v. *S.S. Santa Luisa*, 2 Cir. 1967, 372 F.2d 403;
Pacific Inland Navigation Company v. *Course*, 9 Cir. 1966, 368 F.2d 540;
Carroll v. *S.S. Santa Rosa*, S.D.N.Y. 1966, 257 F. Supp. 688;

[9] 11 L.P.R.A. §§ 1-42.
[10] *Lastra* v. *New York & Porto Rico S.S. Co.*, C.C.A. 1st, 1924, 2 F.2d 812.

Miculka v. *American Mail Lines, Ltd.*, D. Or. 1964, 229 F. Supp. 665;
Hertel v. *American Export Lines, Inc.*, S.D.N.Y. 1964, 225 F. Supp. 703.

The shipowner's duty to furnish a seaworthy vessel is absolute and non-delegable.

Seas Shipping Co. v. *Sieracki*, 1946, 328 U.S. 85, 66 S. Ct. 872, 90 L. Ed. 1099.

The right to recover damages for injuries resulting from unseaworthiness is a federally created right.

The Osceola, 1903, 189 U.S. 158, 23 S. Ct. 483, 47 L. Ed. 760;
Romero v. *International Terminal Operating Co.*, 1959, 358 U.S. 354, 79 S. Ct. 468, 3 L. Ed. 2d 368.

Only one year ago, these principles were recognized by the Court of Appeals. In *Compania Transatlantica Espanola, S.A.* v. *Melendez Torres*, 1 Cir. 1966, 358 F.2d 209 at 213, said the following:

> "The general maritime law applies in Puerto Rico waters and the decedent here could have recovered for unseaworthiness had he lived. *Guerrido* v. *Alcoa Steamship Co.*, 234 F.2d 349, 355 (1 Cir. 1956). The evidence clearly shows that the defendant's vessel and its appurtenances (hatch boards) were not fit for their intended purpose. *Crumady* v. *The Joachim Hendrick Fisser*, 358 U.S. 423, 79 S. Ct. 445, 3 L. Ed. 2d 413 (1959) . . ."
>
> "A longshoreman has legal right to a seaworthy ship. If a person infringes upon this right and harm

results by reason of the ship being unseaworthy, such person is at fault . . ."

Today the Court of Appeals inserts a caveat in the foregoing paragraphs. It says, in effect, the general martime law applies in Puerto Rico "sometimes", or a longshoreman has the legal right to a seaworthy ship "sometimes", the result depending in each case upon whether the employer happens to be the owner of the vessel. But this Court has repeatedly said that one's rights under the maritime law cannot be expunged or curtailed by concepts prevailing in the States.

Kermarec v. *Compagnie Generale Transatlantique*, 1959, 358 U.S. 625, 79 S. Ct. 406, 3 L. Ed. 2d 550;
Pope & Talbot, Inc. v. *Hawn*, 1953, 346 U.S. 406, 74 S. Ct. 202, 98 L. Ed. 143.

In the *Hawn* case this Court said, at pages 409-410 of the official report:

"Nor can we agree that *Hawn's* rights must be determined by the law of Pennsylvania, under which, it is said, any contributory negligence would bar all recovery in this personal injury action. True, *Hawn* was hurt inside Pennsylvania and ordinarily his rights would be determined by Pennsylvania law. But he was injured on navigable waters while working on a ship to enable it to complete its loading for safer transportation of its cargoby water. Consequently, the basis of *Hawn's* action is a maritime tort,* a type of action which the Constitution has placed under na-

* *Atlantic Transport Co.* v. *Imbrovek*, 234 U.S. 52, 61-63, 34 S. Ct. 733, 735, 58 L. Ed. 1208.

tional power to control in 'its substantive as well as its procedural features . . .' *Panama R. Co.* v. *Johnson*, 264 U.S. 375, 386, 44 S. Ct. 391, 393, 68 L. Ed. 748. And *Hawn's* complaint asserted no claim created by or arising out of Pennsylvania law. His right of recovery for unseaworthiness and negligence is rooted in federal maritime law. Even if *Hawn* were seeking to enforce a state-created remedy for this right, federal maritime law would be controlling. While states may sometimes supplement federal maritime policies,** a state may not deprive a person of any substantial admiralty rights as defined in controlling acts of Congress or by interpretative decisions of this Court. These principles have been frequently declared and we adhere to them. See e.g., *Garrett* v. *Moore-McCormack Co.*, 317 U.S. 239, 243-246, 63 S. Ct. 246, 249-251, 87 L. Ed. 239, and cases there cited. *Caldarola* v. *Eckert*, 332 U.S. 155, 67 S. Ct. 1569, 91 L. Ed. 1968, does not support the contention that a state which undertakes to enforce federally created martime rights can dilute claims fashioned by federal power, which is dominant in this field."

** See e.g., *Just* v. *Chambers*, 312 U.S. 383, 387-392, 61 S. Ct. 687, 690-693, 85 L. Ed. 903; *Kelly* v. *State of Washington ex rel. Foss Co.*, 302 U.S. 1, 13, 58 S. Ct. 87, 93, 82 L. Ed. 3.

It is impossible to harmonize this principle of dominant federal power in the maritime field with the decision of the Court below. Even if the unique status of Puerto Rico gives it a broader legislative power over its navigable waters in matters of local concern that states enjoy, it may not usurp the federal jurisdiction granted by the Constitution. In *Alcoa Steamship Company* v. *Velez*, 1 Cir. 1967, . . . F.2d . . ., the lower court recognized limitations upon

this legislative power. Nevertheless, in the instant decision the local statute is construed to validly destroy rights of some American longshoremen, while preserving the right to others on the sole criterion of whether the shipowner is also the employer. This construction of the local statute had been rejected by the District Court of Puerto Rico because it would offend the legislature's dominant intent to protect working men and would produce a "harsh and incongruous result".

Santiago v. *Hermanos,* D.P.R. 1966, 255 F. Supp. 932, 935-936.

Puerto Rican longshoremen are American citizens. As such, they are entitled to the rights, privileges and immunities of all American citizens similarly situated. Public Law 600, § 5 (1), 48 U.S.C.A. § 737. The decision below denies them equal rights and equal protection of the laws, although for this purpose Puerto Rico shall be treated "as though [it] were a State of the Union."

The doctrine of seaworthiness, as applied to martime workers, has been fashioned by this Court as a humanitarian doctrine. The petitioner has been denied this right to a seaworthy vessel without any social or economic justification.

When one considers the issue from the complying employer's point of view, the result is even harsher, more incongruous and equally unjust. This Court has ruled that a shipowner, sued by a longshoreman who had been hired by an independent stevedore, could bring an action over and recover indemnity from the independent stevedore despite the fact that the liability of the stevedore under the federal statute "shall be exclusive and in place of all other liability."

Ryan Stevedoring Co. v. *Pan Atlantic S.S. Corp.;* 1956, 350 U.S. 124, 76 S. Ct. 232, 100 L. Ed. 133;

Weyerhaeuser S.S. Co. v. *Nacirema Operating Co.*, 1958, 355 U.S. 563, 78 S. Ct. 438, 2 L. Ed. 2d 491;
Crumady v. *The Joachim Hendrick Fisser*, 1959, 358 U.S. 423, 79 S. Ct. 445, 3 L. Ed. 2d 413;
Waterman S.S. Co. v. *Dugan & McNamara, Inc.*, 1960, 364 U.S. 421, 81 S. Ct. 200, 5 L. Ed. 2d 169;
Italia Societa Per Azione Di Navigazione v. *Oregon Stevedoring Company*, 1964, 376 U.S. 315, 84 S. Ct. 748, 11 L. Ed. 2d 732.

The Court of Appeals for the First Circuit has similarly imposed liability on the stevedoring contractor in spite of the fact that the local law provides that "compensation shall be the only remedy against the employer". Thus, a Puerto Rican longshoreman employed by an independent contractor has a right to a seaworthy vessel and his employer may have to indemnify the shipowner, while a second Puerto Rican longshoreman employed directly by the shipowner has no such right and the shipowner is relieved of his absolute non-delegable obligation. Presumably, this incongruity would prevail regardless of the flag of the vessel as long as the shipowner complied with the local statute.

The result is even more incomprehensible when one takes into account that Puerto Rico is included within the six great coasting districts of the United States[11] and all vessels of Puerto Rico are nationalized.[12] Whatever the political autonomy of Puerto Rico may be vis-a-vis a state, Section 3 of its Federal Relations Act, Public Law 600, 64 Stat. 319 (1950), requires that the Constitution of the Commonwealth conform with the Constitution of the United States.

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[11] 31 Stat. 79 (1900), 48 U.S.C.A. § 744.
[12] 31 Stat. 79 (1900); 48 U.S.C.A. 744.

The Constitution of the United States in Article III, § 2 grants the jurisdiction of all cases of admiralty and maritime jurisdiction to the United States. This grant of power is one which is co-extensive with and must operate uniformly in the whole United States.

Panama R. Co. v. *Johnson,* 1923, 264 U.S. 375, 44 S. Ct. 391, 68 L. Ed. 748;
Southern Pacific Co. v. *Jensen,* 1917, 244 U.S. 205, 37 S. Ct. 524, 61 L. Ed. 1086;
Knickerbocker Ice Co. v. *Stewart,* 1920, 253 U.S. 149, 40 S. Ct. 438, 64 L. Ed. 834;
State of Washington v. *W. C. Dawson & Co.;* 1924, 264 U.S. 219, 44 S. Ct. 302, 68 L. Ed. 646;
Romero v. *International Terminal Operating Co.,* 1959, 358 U.S. 354, 79 S. Ct. 468, 3 L. Ed. 2d 368.

The Court below recognized this requirement for uniformity in the application of the Maritime law in *Alcoa Steamship Company* v. *Velez,* 1 Cir. 1967, F.2d , but for some inexplicable reason avoids mentioning the requirement in the present case, other than to state that the Puerto Rico Workmen's Accident Compensation Act has "within the area of its applicability, displaced the remedies of the maritime law . . .".

By this pronouncement, an invidious discrimination has occurred, whereby petitioner, and others similarly situated have been deprived of federal rights and the equal protection of the laws. This holding is irreconcilable with the authoritative decisions of this Court and the constitutional grant of the admiralty and maritime jurisdiction.

It is for this Court to resolve the conflict and confusion created by the decision below.

B. In Deciding that Petitioner Was Barred By the Local Compensation Statute From Pursuing His Federal Remedies For A Maritime Claim, the Court Has Decided A Question of Federal Maritime Law Directly in Conflict With the Decisions of Other Courts of Appeals and With Its Own Decisions.

The Court below has construed the exclusive remedy provision of the Puerto Rico Workmen's Accident Compensation Act as intending to deprive the injured worker of its federal maritime claim. It reaches this result by the "compulsion" in its reading of the decisions of the Supreme Court of Puerto Rico. On the other hand, petitioner contends that the Supreme Court of Puerto Rico, in its decisions[13] recognizes the supremacy of the federal admiralty and maritime law, in its sphere. The District Court judges also found no conflict between the intent of the legislature of Puerto Rico and the maritime law.

The decisions of the Supreme Court of Puerto Rico prohibit indemnity recovery from the complying employer in the absence of an express contractual relationship between the employer and the third party tort feasor. Nevertheless, these decisions recognize that under the maritime law, there exists an implied warranty of workmanlike services.

In other words, the Supreme Court of Puerto Rico, like many other states, has not adopted the *Ryan* doctrine for non-maritime torts.

The Court of Appeals for the First Circuit has like-

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[13] *Inter-Island Shipping Corporation* v. *Industrial Commission of Puerto Rico*, Dec. 18, 1963, ... P.R.R. .....; *Cortijo Walker* v. *Puerto Rico Water Resources Authority*, Dec. 18, 1964, ... P.R.R. .....; *Marcano Torres* v. *Puerto Rico Water Resources Authority*, January 20, 1965, ... P.R.R. .....; Unofficial translations of these opinions, not yet officially published in English, are appended hereto.

wise accepted the *Ryan* doctrine in claims over against independent stevedoring contractors for marine claims arising in the navigable waters of Puerto Rico.[14] If *Ryan* and its progeny are applicable in Puerto Rico waters, it is because federal maritime law is supreme since the *Ryan* doctrine has been rejected for non-maritime torts in Puerto Rico. Under the same reasoning, if the federal maritime law is supreme, the Puerto Rico statute cannot deprive the petitioner of his right to a seaworthy vessel.

It is, therefore, impossible to reconcile or harmonize the decision of the Court below and its opinion in *Compania Transatlantica Espanola S.A.* v. *Melendez Torres,* I Cir. 1966, 358 F.2d 209.

It is also impossible to reconcile or harmonize the opinion in the instant case with the same court's opinion in *Alcoa Steamship Company* v. *Velez,* 1 Cir. 1967, F.2d . The sole criterion for a different result in the *Velez* case is that the contract of employment was not entered into in Puerto Rico. Inasmuch as all Puerto Rican vessels fly the American flag, the seamen aboard those vessels who are hired in Puerto Rico may now be divested of their rights under the Jones Act,[15] the law of unseaworthiness and maintenance and cure, even though the Puerto Rican seamen are licensed by the United States Coast Guard, and medical facilities are available for them in United States Public Health Clinics.[16]

Although this Court has not considered the effect of a state workmen's compensation act upon the *Ryan* doc-

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[14] *Compania Transatlantica Espanola S.A.* v. *Melendez Torres,* 1 Cir. 1966, 358 F.2d 209.

[15] 46 U.S.C.A. 688.

[16] In *Velez,* there is a partial retreat from the holding of *Fonseca* v. *Prann,* 1 Cir. 1960, 282 F.2d 153. *Fonseca* has been criticized as being in conflict with Const. Art. III § 2, Amend. XIV § 1, and with Public Law 600 § 5 (1). Note 35 St. John's L. Rev. 324 (1961).

trine, the question has been brought before the Courts of Appeals of the Third, Fourth and Fifth Circuits. Maritime workers injured ashore may pursue remedies under their local compensation acts. However, even if the injury occurs ashore and compensation is due under the local statute, if the longshoreman is actually engaged in the service of a ship, he may be intitled to recover under the federal maritime law.

Gutierrez v. *Waterman Steamship Corp.*, 1963, 373 U.S. 206, 83 S. Ct. 1185, 10 L. Ed. 2d 297.

The issue has then arisen that, if a longshoreman recovers against a shipowner, may the shipowner recover indemnity from the stevedore employer, if the employer is insured under a local compensation statute that rejects the *Ryan* rationale? Each Court of Appeals has answered "yes", even though it was undisputed in each case that the state statute as interpreted by the respective state would have compelled a contrary result.

Hagans v. *Ellerman & Bucknall S.S. Co.*, 3 Cir., 1963, 318 F.2d 563.

American Export Lines, Inc. v. *Revel*, 4 Cir. 1959, 266 F.2d 82.

Koninklyke Nederladsche, Etc. v. *Strachan Shipping Co.*, 5 Cir. 1962, 301 F.2d 741.

McCross v. *Ratnakar Shipping Co.*, D. Md. 1967, 265 F. Supp. 827.

In each of these cases the local statute "within the area of its applicability" would have been interpreted differently. However, because a maritime claim was involved, the principles of the maritime law, as announced by this Court, governed.

It is respectfully contended that there is hopeless con-

flict between the interpretations of the local compensation statutes as they affect the maritime law as construed by the Courts of Appeals of the Third, Fourth and Fifth Circuits and as decided in the court below. Moreover, the decision below cannot be harmonized with other decisions of the United States Court of Appeals for the First Circuit.

This conflict should now be resolved by this Court.

C. In Deciding that Petitioner Could Not Pursue His In Rem Remedy, the Court of Appeals For the First Circuit Has Decided A Question of Federal Maritime Law Directly in Conflict With the Authoritative Decisions of This Court and Other Courts of Appeals.

The procedure followed in the case at bar parallels exactly the procedure in *Reed* v. *Steamship Yaka*, 1963, 373 U.S. 410, 83 S. Ct. 1349, 10 L. Ed. 2d 448. In that case this Court did not reach the issue of whether a ship may ever be held liable for its unseaworthyness where no personal liability could be asserted because, "In our view, the Court of Appeals erred in holding that Pan Atlantic could not be held personally liable for the unseaworthiness of the ship which caused petitioner's injury." 373 U.S. at 412, 83 S. Ct. at 1351.

The rationale of the *Reed* decision was that the shipowner was personally liable for the unseaworthiness and the issue was whether he had been exonerated from that liability by the exclusive remedy provision of the Compensation Act. The Court concluded "that petitioner was not barred by the Longshoreman's Act from relying on Pan Atlantic's liability as a shipowner for the Yaka's unseaworthiness in order to support his libel *in rem*

against the vessel." 373 U.S. at 415-416, 83 S. Ct. at 1353.[17]

The same question was left unresolved in *Guzman* v. *Pichirilo*, 1962, 369 U.S. 698, 82 S. Ct. 1095, 8 L. Ed. 2d 205. By the decision of this Court in *Jackson* v. *Lykes Bros. Steamship Co., Inc.*, it has become unimportant whether the action is *in personam* or *in rem*, because Section 905 of Title 33 of the United States Code has been held to be no bar whatsoever.

Assuming arguendo that Puerto Rico could bar the action against the shipowner-employer *in personam* (a proposition which is incompatible with the decisions of this Court), it is respectfully contended that Puerto Rico could not deprive the petitioner of his admiralty remedy against the vessel. The ship was unseaworthy and the shipowner was liable for that unseaworthiness. Even if Puerto Rico could exonerate that liability, it could not erase the maritime lien that arose the moment the petitioner was injured as a result of that unseaworthiness.

In a long line of decisions this Court has held that *in rem* liability may be imposed even when the owner was not liable *in personam*. The personification of a vessel is a legal fiction but the doctrine is useful and

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[17] Before the Supreme Court reviewed *Reed*, a conflict existed on the question of whether a vessel was liable *in rem*, for damages occurring during a demise if the charterer was, for some reason, not personally liable. Aligned with the District Court in *Reed* v. *The Yaka*, E. D. Pa. 1960, 183 F. Supp. 69, which permitted the *in rem* proceeding were *Grillea* v. *United States*, 2 Cir. 1956, 232 F.2d 919; *Burns Bros.* v. *Central R.R. of New Jersey*, 2 Cir. 1953, 202 F.2d 910; *Leotta* v. *The Esparta*, S.D.N.Y. 1960, 188 F. Supp. 168; *Garcia* v. *The Beauregard*, D.N.J. 1963, 193 F. Supp. 662. Relied upon by the Court of Appeals for the Third Circuit in *Reed* v. *Steamship Yaka*, 3 Cir. 1962, 307 F.2d 203, were two decisions of the Court of Appeals for the First Circuit, *Vitozi* v. *Balboa Shipping Co.*, C.C.A. 1st, 1947, 163 F.2d 286 and *Ruiz Pichirilo* v. *Maysonet Guzman*, 1 Cir. 1961, 290 F.2d 812, reversed on other grounds, *Guzman* v. *Pichirilo*, 1962, 369 U.S. 698, 82 S. Ct. 1095, 8 L. Ed. 1095.

logical,[18] and recognized by the Supreme Court.[19] Vessels have been forfeited for statutory violations without privity or knowledge on the part of the owner. *The Little Charles,* C.C. Va. 1819, 26 Fed. Cases 979, Case No. 15,612. Vessels have also been held subject to forfeiture for piracy in the absence of privity or knowledge on the part of the owner. *The Palmyra,* 1829, 25 U.S. (12 Wheat.) 1, 6 L. Ed. 531. *United States* v. *The Malek Adhel,* 1844, 43 U.S. (2 How.) 210, 11 L. Ed. 239.

Damages caused by the negligence of a compulsory pilot devolve upon a vessel. *The China,* 1869, 74 U.S. (7 Wall.), 53, 19 L. Ed. 67. The vessel is also liable for collision damage which occurs during a demise charter and in the absence of any personal liability of a shipowner. *The Barnstable,* 1901, 181 U.S. 464, 21 S. Ct. 684, 45 L.Ed. 954. Cases cited to the contrary deal with questions that are either procedural, as in *Continental Grain Co.* v. *The Barge FLB-585,* 1960, 364 U.S. 19, 80 S. Ct. 1470, 4 L. Ed. 2d 1540, or involve interpretations of statutes that limit liability as in *The City of Norwich,* 1886, 118 U.S. 468, 6 S. Ct. 1150, 30 L. Ed. 134; *Consumers Import Co.* v. *Kabushiki Kaisha Kawasaki Zosenjo,* 1960, 320 U.S. 249, 64 S. Ct. 15, 88 L. Ed. 30. They did not intend to destroy the historic difference between admiralty actions *in personam* and those *in rem.*[20]

Cases relied upon below by the respondent involve, in one form or other, the doctrine of sovereign immunity. In *New York Dock Co.* v. *The Poznan,* 1927, 274 U.S. 117, 47 S. Ct. 482, 71 L. Ed. 955, it was held that no liens could attach during *custodia legis.* This did not prevent this

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[18] Holmes, The Common Law, 26-27 (1881).

[19] *Canadian Aviator, Ltd.* v. *United States,* 1945, 324 U.S. 215, 65 S. Ct. 639, 89 L. Ed. 901.

[20] Dissenting opinion in *Continental Grain Co.* v. *The Barge FBL-585, supra,* 364 U.S. 19, at pp. 37-38. This distinction is preserved in the Supplemental Admiralty Rules (1956).

Court from awarding recovery for services rendered under the alternate theory of expenses incurred in the "administration of justice."

The denial of *in rem* relief in *The Western Maid,* 1922, 257 U.S. 419, 42 S. Ct. 159, 66 L. Ed. 299, has been explained on the ground that the personality of the vessels had merged in the sovereign and inasmuch as the vessels had been sold or returned, the sovereign was both immune from suit and incapable of passing imperfect title.[21] This case is *sui generis* and a like situation could never again arise because of the enactment of the Public Vessels Act. 46 U.S.C.A. §§ 781-790. None of the situations involved in these exceptions is applicable to the case at bar nor were they relied upon by the Court of Appeals.

However, the Court of Appeals did rely upon *Noel* v. *Isbrandtsen Company,* 4 Cir. 1961, 287 F.2d 783, cert. denied 363 U.S. 975, 81 S. Ct. 1944, 6 L. Ed. 2d 1264, and its decision in *Ruiz Pichirilo* v. *Maysonet Guzman,* 1 Cir. 1961, 290 F.2d 812. The holding of the *Noel* case was inapposite inasmuch as the vessel in that case was not involved in navigation and no obligation of seaworthiness could have been assumed by the shipowner. The *Maysonet Guzman* case was reversed by this Court, *Guzman* v. *Pichirilo,* 1962, 369 U.S. 698, 82 S. Ct. 1095, 8 L. Ed. 2d 205, without resolving the issue. It is urged that the doctrine of *Ruiz Pichirilo* v. *Maysonet Guzman,* 1 Cir. 1961, 290 F.2d 812, continues to create confusion in the availability of maritime remedies and should be reviewed by this Court.

Conclusion

For the foregoing reasons, it is respectfully submitted that this Honorable Court issue a writ of certiorari to

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[21] Gilmore & Black, The Law of Admiralty, pp. 500-507.

the United States Court of Appeals for the First Circuit in this cause, and that this Court should review and reverse the decision of the Court of Appeals and reinstate the decree of the District Court for the District of Puerto Rico in favor of the petitioner.

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Appendix A

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 6787.

ALCOA STEAMSHIP COMPANY, INC.,
CLAIMANT, APPELLANT,
v.
ANTERO PEREZ RODRIGUEZ,
LIBELANT, APPELLEE.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Before ALDRICH, *Chief Judge*,
MARIS* and COFFIN, *Circuit Judges*.

Antonio M. Bird, with whom *J. Ward O'Neill, Francis X. Byrn, Hartzell, Fernandez & Novas* and *Haight, Gardner, Poor & Havens* were on brief for appellant.

Harvey B. Nachman, with whom *Nachman & Feldstein* was on brief, for appellee.

April 20, 1967

MARIS, *Circuit Judge*. The libelant, Antero Perez Rodriguez, employed as a longshoreman by Alcoa Steamship Company, sustained injuries on one of Alcoa's vessels which it was operating in the navigable waters of the Commonwealth of Puerto Rico. The libelant was awarded compensation by the State Insurance Fund under the Puerto Rico Workmen's Accident Compensation Act.[1] He then brought suit in rem in the United States District Court for the District of Puerto Rico against Alcoa's vessel al-

* By designation.

[1] Act of April 18, 1935, No. 45, 11 L.P.R.A. §§ 1 et seq.

leging that the respondent vessel "had breached its duty and warranty to provide a seaworthy vessel" by reason of which he was injured and he prayed for a decree awarding him damages against the vessel.[2] Alcoa, as claimant of the vessel, stipulated that the libelant was precipitated in to the lower hold of the vessel from a ladder when the bolts of the ladder parted from the hatch wall which caused libelant's injuries and Alcoa agreed that $53,000 was the reasonable value of the damages sustained by libelant. Accordingly the only question submitted to the district court for its determination was whether the libelant was barred from bringing this action by section 20 of the Puerto Rico Workmen's Accident Compensation Act, 11 L.P.R.A. § 21.

That section provides:

> "When an employer insures his workmen or employees in accordance with this chapter, the right herein established to obtain compensation shall be the only remedy against the employer; but in case of accident to, or disease or death of, the workmen or employees not entitled to compensation under this chapter, the liability of the employer is, and shall continue to be, the same as if this chapter did not exist."

The district court held that the action was not barred by Section 20 and entered a judgment in favor of the libelant for $53,000. This appeal by Alcoa followed.

On this appeal Alcoa contends that the district court erred in not following the prior decisions of this court holding that a longshoreman sustaining injuries while unloading his employer's vessel on navigable waters within the territorial limits of Puerto Rico may not maintain an action for unseaworthiness against his employer's vessel

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[2] Alcoa filed a claim of ownership, posted a bond and the vessel was released.

when his employer is covered by the Puerto Rico Workmen's Accident Compensation Act. We agree.

In *Guerrido* v. *Alcoa Steamship Co.*, 1 Cir., 1956, 234 F.2d 349, we had occasion to consider the impact of Congressional enactments upon the Spanish maritime law of Puerto Rico and held that it was the intent of Congress, in giving the Puerto Rico Legislature legislative power over Puerto Rico waters, that the general rules of maritime law as understood in the United States should follow the flag to Puerto Rico waters except to the extent that these rules were rendered locally inapplicable either because they were not designed to apply to Puerto Rico waters or because of inconsistent Puerto Rican legislation. The issue presented in the *Guerrido* case was whether a longshoreman injured in the territorial waters of Puerto Rico could sue a third party vessel owner by reason of the unseaworthiness of the vessel. We adhered to our holding in *Lastra* v. *New York & Porto Rico S.S. Co.*, 1 Cir. 1924, 2 F.2d 812, that the Puerto Rico Workmen's Accident Compensation Act applied to maritime workers. Since section 31 of that Act, 11 L.P.R.A. § 32, recognized the right to an action against a third party based on other existing law, we held that in an action by the longshoreman against the vessel owner who was not his employer the local law was not inconsistent with the federal maritime law. We concluded, therefore, that the longshoreman could maintain an action under the federal maritime law against the third party shipowner based upon the unseaworthiness of the vessel.

In *Fonseca* v. *Prann*, 1 Cir. 1960, 282 F.2d 153, *cert. den.* 365 U.S. 860, we were faced with the question whether a maritime worker could bring suit under the federal maritime law against his employer and, in view of the exclusive provisions of the local compensation act, we answered that question in the negative.

In *Waterman Steamship Corporation* v. *Rodriguez*, 1 Cir. 1961, 290 F.2d 175, 179, which involved an action by a longshoreman employed by a stevedoring company which has been brought against a shipowner for injuries sustained aboard the vessel while lying in the port of San Juan, we adhered to our prior view, saying:

> "In the Fonseca case we held that the Puerto Rico Workmen's Accident Compensation Act had rendered the general maritime law of unseaworthiness inapplicable to Puerto Rican waters so far as suits by injured seamen against their employers are concerned. In the Guerrido case, however, we had pointed out that Puerto Rican legislation, such as the Workmen's Accident Compensation Act, could not supplant a general rule of maritime law which Congress in the exercise of its constitutional power has expressly made applicable to Puerto Rican waters in common with all other American waters. It was after quoting this caveat in the Guerrido case and in the light of it that we said in the Fonseca case that 'we are not aware that Congress has ever taken action to make the general maritime law of unseaworthiness apply in those waters' [282 F.2d 153, 156-157], the statement upon which the defendant bases its present contention. We went on to point out in the Fonseca case that if Congress should take such affirmative action it would have the effect of supplanting the Workmen's Accident Compensation Act by the general law of unseaworthiness so far as concerns the rights of seamen injured in Puerto Rican waters against their employers.
>
> "As we demonstrated in the Guerrido case, the general maritime law of unseaworthiness had become applicable in Puerto Rican waters without express enactment by Congress, subject to being supplanted

in whole or in part by Puerto Rican legislation. And since Congress has not made the law of unseaworthiness expressly applicable, to the exclusion of the Workmen's Accident Compensation Act, to seamen injured in Puerto Rican waters suing their employers we held in the Fonseca case that the Compensation Act did have the effect of supplanting in such cases the maritime law of unseaworthiness which is otherwise in force in Puerto Rican waters. We were, of course, dealing only with the right claimed by the seaman in that case to sue his employer for damages by reason of the unseaworthiness of the vessel upon which he was injured in Puerto Rican waters. The right of a seaman or longshoreman, such as the present plaintiff, to base a suit against another than his employer upon the maritime law of unseaworthiness was not involved in that case and our discussion had no relation to it.'"

We adhere to the views expressed in our prior opinions to the effect that the Puerto Rican Workmen's Accident Compensation Act has, within the area of its applicability,[3] displaced the remedies of the maritime law, including the Federal Longshoremen's Act[4] and provides the sole remedy of a Puerto Rico longshoreman against his employer for injuries sustained in the course of his employment.[5] We have been referred to no Puerto Rico statute or congressional enactment which has modified our

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[3] As to one of the limits of the area of the Act's applicability see the opinion of this court filed this day in *Alcoa Steamship Company, Inc., et al.* v. *Ulpiano Velez,* F.2d .

[4] Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C.A. §§ 901 et seq.

[5] See *Inter Island Shipping Corporation* v. *Industrial Commission of Puerto Rico,* Dec. 18, 1963 P.R.R. ; *Cortijo Walker* v. *Puerto Rico Water Resources Authority,* Dec. 18, 1964 P.R.R. ; *Marcano Torres* v. *Puerto Rico Water Resources Authority,* Jan. 20, 1965, P.R.R. .

holding in the *Guerrido* case that the local workmen's compensation act supplanted the law of unseaworthiness in respect to locally employed maritime workers. Moreover, particularly in view of the unique status of Puerto Rico, we think that if and when Congress deems it advisable to extend law to Puerto Rico which would otherwise have been inapplicable to that Commonwealth, it will do so in clear and explicit terms. See *Royal Indemnity Co.* v. *Puerto Rico Cement Corp.*, 1 Cir. 1944, 142 F.2d 237; Defense Bases Act, 42 U.S.C.A. §§ 1651 et seq.

We conclude that the district court erred in holding that the present action was not barred by section 20 of the Puerto Rico Workmen's Accident Compensation Act.

The libelant argues, however, that the exclusive provisions of section 20 of the Puerto Rico Workmen's Accident Compensation Act, which immunizes an employer against suit by his injured employee, must now be more narrowly construed in the light of *Reed* v. *The Yaka*, 1963, 373 U.S. 410, which, he asserts, upholds the right of a longshoreman injured in the course of his employment on a vessel to sue the owner of the vessel for damages based on the unseaworthiness of the vessel, even though the owner of the vessel is his employer and has paid him compensation under the Longshoremen's and Harbor Workers' Compensation Act and in spite of the specific provision of that act making it the longshoreman's exclusive remedy against his employer. We find it difficult to determine the intended scope of the *Yaka* case. For the fact is that the longshoreman's suit in that case was not brought against his employer but rather against the vessel on which he was injured, which was in fact owned by a third party, Waterman Steamship Corporation. It was the shipowner which brought in the longshoreman's employer, a bareboat charterer of the vessel, as a third party defendant alleged to be liable over to the shipowner

under the indemnity terms of the charter. *Reed* v. *The Yaka,* D.C. Pa. 1960, 183 F. Supp. 69, 77. It was on this theory, under the doctrine of *Ryan Stevedoring Co.* v. *Pan-Atlantic S.S. Corp.,* 1956, 350 U.S. 124, that the district court entered the judgment in favor of the longshoreman which the Supreme Court ultimately affirmed.

In any event it is clear that in the present case we need not determine the exact scope of the *Yaka* decision. For in that case the Supreme Court was dealing with the exclusive remedy provision of the federal Longshoremen's and Harbor Workers' Compensation Act as to the construction of which it is the final authority. Here, however, we are not dealing with a federal statute but rather with a statute of the Commonwealth of Puerto Rico as to the meaning and scope of which it is not the federal courts, but rather the courts of Puerto Rico, which have the final determination. In making that determination the views of the Supreme Court in the *Yaka* case with respect to the federal act might well be persuasive but would surely not be binding upon the Puerto Rico courts.

Our examination of the decisions of the Supreme Court of Puerto Rico under the Workmen's Accident Compensation Act compels the conclusion that the Act is intended to and does provide the exclusive remedy against his employer for a covered employee who is injured in the course of his employment. *United Porto Rican Sugar Co.* v. *District Court,* 1933, 44 P.R.R. 904; *Onna* v. *The Texas Co.,* 1945, 64 P.R.R. 497; *DeJesus* v. *Osorio,* 1946, 65 P.R.R. 601; *Inter Island Shipping Corp.* v. *Industrial Commission Of Puerto Rico,* Dec. 18, 1963, P.R.R. ; *Cortijo Walker* v. *Puerto Rico Water Resources Authority,* Dec. 18, 1964, P.R.R. . In the *Inter Isalnd Shipping Corp.* case, which involved a seaman, the Supreme Court of Puerto Rico reaffirmed the exclusive character of the

Act and did not refer to the *Yaka* case even though the latter had been handed down some months previously.

We come then to the question whether the libelant may nonetheless maintain the libel in rem against the vessel for unseaworthiness as if it were a third party on the ground that it breached a warranty to be a seaworthy vessel. This theory was rejected by our court in *Ruiz Pichirilo* v. *Maysonet Guzman*, 1961, 290 F.2d 812, reversed on other grounds, *Guzman* v. *Pichirilo*, 1962, 369 U.S. 698.[6] We held that the "concept of a ship as an individual may have an aura of romance befitting the lore of the sea, but to regard it as an entity having separate responsibilities independent of the primary legal responsibility of some human actor has little rational appeal." Nor did we find that the doctrine of liability for unseaworthiness should lead to a different result. We stated "It is true that one speaks of unseaworthiness 'of the vessel' and of 'liability without fault,' but this cannot obscure the fact that liability depends upon a legal obligation growing out of a relationship between individuals: the injured party and the one charged with preventing the injury." (290 F.2d pp. 814-815). See also, *Noel* v. *Isbrantsen Company*, 4 Cir. 1961, 287 F.2d 783, 785-786.

Accordingly, since, as we have shown, section 20 of the Puerto Rico Workmen's Accident Compensation Act bars a suit by the libelant against the vessel owner on the ground of unseaworthiness, the present action in rem cannot be maintained solely against the vessel as though it were a third party independently liable for the libelant's injuries.

The decree of the district court will be reversed and the cause remanded with directions to dismiss the libel.

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[6] This precise question was not reached by the Supreme Court in *Guzman* v. *Pichirilo*, 1962, 369 U.S. 698, or in *Reed* v. *Steamship Yaka*, 1963, 373 U.S. 410.

Appendix B-1

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 6703.

ALCOA STEAMSHIP COMPANY, INC., ET AL.,
PLAINTIFFS, APPELLANTS,
v.
ULPIANO VELEZ, MANAGER,
PUERTO RICO STATE INSURANCE FUND,
DEFENDANT, APPELLEE.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Before ALDRICH, *Chief Judge*,
MARIS* and MCENTEE, *Circuit Judges*.

Jose L. Novas, Nicolas Jimenez and *William E. Wright*, with whom *J. Ward O'Neill, Rodolfo Sequeira, Hartzwell, Fernandez & Novas, Terriberry, Rault, Carroll, Yancey & Farrell, Haight, Gardner, Poor & Havens* and *Rodriguez Ema & Rodriguez Ramon* were on brief, for appellants.

Peter Ortiz, Assistant Solicitor General, with whom *J. B. Fernandez Badillo*, Solicitor General, was on brief, for appellee.

April 20, 1967.

MARIS, *Circuit Judge*. The question presented on this appeal is whether the Puerto Rico Workmen's Accident Compensation Act, 11 L.P.R.A. §§ 1 et seq., is applicable to seamen who have been employed in the continental United States and who are working temporarily in the navi-

* Sitting by designation.

gable territorial waters of Puerto Rico as crew-members of foreign[1] owned vessels when they are injured.

The plaintiffs Alcoa Steamship Company, Inc., A. H. Bull Steamship Company, Inc., Lykes Brothers Steamship Company, Inc., and Waterman Steamship Corporation, brought suit in January 1962 against the Manager of the Puerto Rico State Insurance Fund in the United States District Court for the District of Puerto Rico alleging that the defendant in July 1961 had advised each of them that in view of the decision of this court in *Fonseca* v. *Prann*, 1960, 282 F.2d 153, he understood that all accidents suffered by members of crews of vessels in the navigable waters of Puerto Rico were covered by the Puerto Rico Workmen's Accident Compensation Act and, therefore, he was serving notice of a new classification and premium assessment with respect to seamen employed by them working in the navigable waters of Puerto Rico.

The plaintiffs refused to file payroll reports pursuant to the Act or to pay the premiums assessed against them, contending that defendant had no authority to make the demand upon them. Their refusal was based on the grounds that the seamen involved were not residents of Puerto Rico and had not been employed there, but were employed by plaintiffs pursuant to federal maritime law under shipping articles executed at continental United States ports. The plaintiffs alleged that their refusal to comply with the defendant's demands subjected them to actions as uninsured employers and to liens by successful claimants against their property, 11 L.P.R.A. § 16, and also subjected them to penalties for failure to insure their seamen, 11 L.P.R.A. § 18, and accordingly they prayed for a judgment declaring that their liability for accidental injury or death suf-

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[1] The term "foreign" is used in the sense that these vessels are owned by corporations incorporated in various States of the Union other than Puerto Rico.

fered by their seamen while in the course of employment within the navigable waters of Puerto Rico arises under federal maritime law and that the local workmen's accident compensation act does not apply.

The parties stipulated that in cases of accidental injury to or death of any seaman employed by plaintiffs aboard their vessels occurring within the navigable waters of Puerto Rico the matter would be referred to the United States Public Health Service as it would upon such an occurrence happening in any port of the United States. It was also stipulated that during 1965 the intervenor Sea-Land Service, Inc., and the plaintiff Waterman Steamship Corporation paid, under protest, the premiums demanded by the defendant and filed petitions for review before the Industrial Commission of Puerto Rico, which at the time of trial were still pending.

The District Court construed our statement in *Fonseca* v. *Prann*, 282 F.2d 153, 157, that the "Congress intended to clothe the Government of Puerto Rico with power to provide for the application of its workmen's compensation act to injuries suffered by employees on local navigable waters" to include maritime workers coming from ports outside Puerto Rico aboard vessels belonging to owners outside Puerto Rico. The Court concluded that, since that power was delegated by Congress to Puerto Rico, the only remaining question was whether the Puerto Rico Legislature intended to include such foreign seamen within the coverage of the compensation act and that this question could adequately be resolved under the procedure provided by the Puerto Rico Workmen's Accident Compensation Act. Accordingly, the district court withheld consideration of the merits and dismissed the complaint. This appeal by the plaintiffs followed.

The plaintiffs contend that the district court abused its discretion in dismissing the complaint. It is argued that

our holding in *Fonseca* v. *Prann* does not support the broad interpretation given that case by the defendant and by the district court. We agree.

In *Fonseca* v. *Prann* the sole question for consideration was whether a Puerto Rico seaman could sue his employer, who was insured under the Puerto Rico Workmen's Accident Compensation Act, for negligence under the Jones Act and for unseaworthiness under the general maritime law to recover for injuries sustained while at work within the territorial limits of Puerto Rico. We held that Section 20 of the Act, 11 L.P.R.A. § 21, barred such an action. In that case we had no occasion to deal with seamen who had been employed outside the jurisdiction of Puerto Rico to work on vessels owned by non-resident employers and whose only contact with Puerto Rico was when their vessel entered the waters of Puerto Rico for a temporary visit in the course of its voyage. As we pointed out in *Guerrido* v. *Alcoa Steamship Co.*, 1 Cir. 1956, 234 F.2d 349, and in *Waterman Steamship Corporation* v. *Rodriguez*, 1 Cir. 1961, 290 F.2d 175, 179, Puerto Rican legislation, such as the Puerto Rico Workmen's Accident Compensation Act, could not supplant a general rule of maritime law which Congress in the exercise of its constitutional power had expressly made applicable to Puerto Rican waters in common with all other American waters.

But what we had said in the *Fonseca* case was not intended to mean that the Congress had delegated to the Legislature of Puerto Rico power in the general field of admiralty and maritime law to apply its local compensation act to seamen who are actually employed under federal maritime laws and to require foreign vessel owners who are responsible to their maritime workers under those laws for accidental injury or death, or who have provided them with compensation for those casualties, to insure these workers also under the local Puerto Rico statute. Indeed,

the delegation of such power would radically change the characteristic feature of the general maritime law that it follows the flag of the vessel[2] and would seriously interfere with the proper uniform application of that law in its international and interstate relations. *Southern P. Co.* v. *Jensen,* 1917, 244 U.S. 205; *Knickerbocker Ice Co.* v. *Stewart,* 1920, 253 U.S. 149; *Washington* v. *Dawson & Co.,* 1924, 264 U.S. 219.

In *Alcoa* v. *Perez Rodriguez,* filed this day, F.2d , which involved a Puerto Rican maritime worker compensated for injuries under the provisions of the Puerto Rico Workmen's Accident Compensation Act, we adhere to our prior view to the effect that the Puerto Rico statute has, within the area of its applicability, displaced the remedies of the maritime law and provided the sole remedy of a Puerto Rican longshoreman against his insured employer for injuries sustained in the course of his employment. But this is the extent to which the Legislature of Puerto Rico is empowered to supersede the rules of the general maritime law in Puerto Rico waters. And, furthermore, we think that this is in conformity with the spirit of the Puerto Rico Workmen's Accident Compensation Act. By the Act of May 16, 1958, No. 16, p. 19, the Legislature enacted an exemption as to technical personnel protected by laws of other jurisdictions. 11 L.P.R.A. § 28a. In the statement of motives, inter alia, appearing in the Act appears the following:

> "By express provision of the workmen's accident compensation statutes, or by judicial order, the laws in the continent generally have extraterritorial effect, so that when workmen are hired in the various states, they are subject to the Workmen's Compensation Act of the State where they are hired. We are facing the

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[2] *Lauritzen* v. *Larsen,* 1953, 345 U.S. 571, 584-585; *Guerrido* v. *Alcoa Steamship Co.,* 1 Cir., 1956, 234 F.2d 349, 354.

same situation as regards the employment of technical personnel imported from the United States of America.

"Since our statute establishes compulsory insurance, the firms employing such technical personnel would be bound to maintain double insurance in connection therewith.

"It is convenient to industry in general, and to the employers affected, that a reasonable standard be established to prevent duplication in the payment of such premiums." [See note, 11 L.P.R.A. § 28a.]

Here is clearly expressed intention by the Legislature of Puerto Rico that its Workmen's Accident Compensation Act shall not be used as a vehicle to require the maintenance of duplicating compensation insurance by an employer.

Moreover, the Supreme Court of Puerto Rico has itself applied the generally accepted law of the flag by construing the Puerto Rico Workmen's Accident Compensation Act to cover injuries to Puerto Rican maritime workers occurring in waters away from Puerto Rico. *Inter Island Shipping Corporation* v. *Industrial Commission of Puerto Rico*, Dec. 18, 1963, P.R.R. . In that case the contract with the maritime worker had been negotiated in Puerto Rico and the ship belonged to a corporation organized under the laws of Puerto Rico. The Court held that the injury, although it occurred outside of Puerto Rican waters, was insured under the local accident compensation act, stating:

"The Industrial Commission in declaring itself without jurisdiciton in this case, applied the criterion that our Workmen's Accident Compensation Act does not cover an accident occurred outside our territorial limits. The fact that the employer in this case paid premiums also computed on the wages paid to the

employer's maritime crew when it worked outside of Puerto Rico is not argued. The power of the Legislature of Puerto Rico to provide medical assistance and hospitalization to our migrating laborers who are injured outside of Puerto Rico if they return to our country, Act. No. 77 of June 23, 1958 is not argued. There is evidence that the benefits of our workmen's compensation has been extended to some of our officials called to work outside of Puerto Rico for accidents suffered outside our territory. The concept of 'extraterritoriality' carries impliedly with it the invasion of the juridicial sovereignty of another state, city or political body. When said invasion is not produced, it can hardly be considered that the application of a law has been given extraterritorial effect."

We conclude that the Puerto Rico Workmen's Accident Compensation Act cannot be applied to seamen injured in Puerto Rican waters on an American vessel owned by a corporation of a state other than Puerto Rico where the contract of employment was not entered into in Puerto Rico. Such seamen's rights under the Jones Act, the maritime law of unseaworthiness, and maintenance and cure attach upon their employment and follow them into Puerto Rican waters.

The judgment of the district court will be reversed and the case will be remanded to the district court for further proceedings not inconsistent with this opinion.

Appendix B-2

IN THE SUPREME COURT OF PUERTO RICO
CI-63-7 Review

INTER ISLAND SHIPPING CORPORATION,
Appellant,
v.
INDUSTRIAL COMMISSION OF PUERTO RICO,
Appellee.

Division composed of Mr. Justice Belaval, as Chief Judge of Division, Mr. Justice Hernandez Matos and Mr. Justice Santana Becerra.

MR. JUSTICE BELAVAL delivered the opinion of the Court.

San Juan, Puerto Rico, December 18, 1963

The Inter Island Shipping Corporation, a corporation organized under the laws of Puerto Rico, with its main office in Puerto Rico, executed a contract of work in Puerto Rico with Roque Rosado Claudio, residing in Puerto Rico, by virtue of which Rosado Claudio would work as seaman on board the ship "TMT Lloyd" in trips from the port of San Juan, Puerto Rico to St. Thomas and St. Croix, Virgin Islands, returning to San Juan port, each of said trips having a duration of twenty-four to twenty-six hours, and making an average of two trips a week.

Appellant obtained from the State Insurance Fund a labor accident policy on the basis of the total amount of its payroll which included, not only the wages earned by his marine workers and employees in the work done inside the island of Puerto Rico, but also the work done outside the territorial limits of Puerto Rico during said trips.

On September 1, 1962 seaman Roque Rosado Claudio suffered an accident while the ship "TMT Lloyd" was anchored in waters of St. Thomas, Virgin Islands. On Sep-

tember 6, 1962, appellant filed a labor accident report with the State Insurance Fund of Puerto Rico. On October 31, 1962 the Manager of the State Insurance Fund decided that it lacked jurisdiction to entertain the case because the accident occurred outside the territorial limits of the Commonwealth of Puerto Rico. Appellant appealed from the decision to the Industrial Commission which rendered a decision dismissing the petition and affirming the decision of the State Insurance Fund. In the latter decision the point was also sustained that the employer was not entitled to appeal from the decision of the Manager, because said employer had not been declared uninsured by the Manager. Reconsideration was requested and denied.

On review in this Court, appellant assigns three errors: (1) that the labor accident involved in the present case was not covered by employer's policy; (2) that our Workmen's Accident Compensation Act is not effective extraterritorially to cover an accident which occurred to a laborer while he is in the scope of his employment outside the territorial limits of Puerto Rico for an employer insured with the State Insurance Fund; (3) that employer is not entitled to appeal to the Industrial Commission from a decision of the Manager of the State Insurance Fund in which said official refuses to include under the employer's policy a labor accident occurred to said employer's worker.

1-2- The power of the Legislature of Puerto Rico to establish a workmen's accident compensation system when the accident occurs in the maritime zone of Puerto Rico and adjacent waters merits some history. After the cession of the province of Puerto Rico by the government of Spain to the government of the United States on April 11, 1899, the Congress of the United States adopted the Organic Act of 1900 approved on April 12, 1900, to govern in the island of Puerto Rico, § 9 of which provided: "That the Commissioner of Navigation shall make such regulations, sub-

ject to the approval of the Secretary of the Treasury, as he may deem expedient for the nationalization of all vessels owned by the inhabitants of Puerto Rico on the eleventh day of April, eighteen hundred and ninety-nine, and which continued to be so owned up to the date of such nationalization, and for the admission of the same to all the benefits of the coasting trade of the United States; and the coasting trade between Puerto Rico and the United States shall be regulated in accordance with the provisions of law applicable to such trade between any two great coasting districts of the United States."

To carry out the policy stated by the Congress of the United States in § 9, on May 12, 1906 the amendment to § 4348 of the Revised Statutes of the United States was adopted. It provides: "The seacoasts and navigable rivers of the United States and Puerto Rico shall be divided into five great districts: The first to include all the collection districts on the seacoasts and navigable rivers between the northern boundary of the State of Maine and the southern boundary of the State of Texas; the second to consist of the island of Puerto Rico; the third to include the collection districts on the seacoasts and navigable rivers between the southern boundary of the State of California and the northern boundary of the State of Washington; the fourth to consist of the Territory of Alaska; the fifth to consist of the Territory of Hawaii."

Section 13 of the Organic Act of 1900 also provided: "That all property which may have been acquired in Puerto Rico by the United States under the cession of Spain in said treaty of peace in any public bridges, road houses, water powers, highways, unnavigable streams, and the beds thereof, subterranean waters, mines, or minerals under the surface of private lands, and all property which at the time of the cession belonged, under the laws of Spain then in force, to the various harbor-works of Puerto Rico,

and all the harbor shores, docks, slips, and reclaimed lands, but not including *harbor areas or navigable waters,* is hereby placed under the control of the Government established by this Act to be administered for the benefit of the People of Puerto Rico; and the Legislative Assembly hereby created shall have authority, subject to the limitations imposed upon all its acts to legislate with respect to all such matters as it may deem advisable."

When the Organic Act of 1917 was enacted, § 13 of the Organic Act of 1900 was substituted by §§ 7 and 8 of the new Act which provide: "That all property which may have been acquired in Puerto Rico by the United States under the cession of Spain in the treaty of peace entered into on the tenth day of December, eighteen hundred and ninety-eight, in any public bridges, road houses, water powers, highways, unnavigable streams and the beds thereof, subterranean waters, mines or minerals under the surface of private lands, all property which at the time of the cession belonged, under the laws of Spain then in force, to the various harbor works boards of Puerto Rico, all the harbor shores, docks, slips, reclaimed lands, and all public lands and buildings not heretofore reserved by the United States for public purposes, is hereby placed under the control of the Government of Puerto Rico, to be administered for the benefit of the People of Puerto Rico; and the Legislature of Puerto Rico shall have authority, subject to the limitations imposed upon all its acts, to legislate with respect to all such matters as it may deem advisable. *Provided,* That the President may from time to time, in his discretion, convey to The People of Puerto Rico such lands, buildings, or interests in lands or other property now owned by the United States and within the territorial limits of Puerto Rico as in his opinion are no longer needed for purposes of the United States. And he may from time to time accept by legislative grant from Puerto Rico any

lands, buildings, or other interests or property which may be needed for public purposes by the United States." (§ 7)

"That the harbor areas and navigable streams and bodies of water and submerged land underlying the same in and around the Island of Puerto Rico and the adjacent islands and waters, now owned by the United States and not reserved by the United States for public purposes be, and the same are hereby, placed under the control of the Government of Puerto Rico, to be administered in the same manner and subject to the same limitations as the property enumerated in the preceding section: *Provided,* That all laws of the United States for the protection and improvement of the navigable waters of the United States and the preservation of the interests of navigation and commerce, except so far as the same may be locally inapplicable, shall apply to said Island and waters and to its adjacent islands and waters: *Provided, further,* that nothing in this Act contained shall be construed so as to affect or impair in any manner the terms or conditions of any authorizations, permits, or other powers heretofore lawfully granted or exercised in or in respect of said waters and submerged land in and surrounding said Island and its adjacent islands by the Secretary of War or other authorized officer or agent of the United States; *And provided, further,* That the Act of Congress approved June eleventh nineteen hundred and six, entitled 'An Act to empower the Secretary of War, under certain restrictions, to authorize the construction, extension, and maintenance of wharves, piers, and other structures on lands underlying harbor areas in navigable streams and bodies of water in or surrounding Puerto Rico and the islands adjacent thereto,' and all other laws and parts of laws in conflict with this section be, and the same are hereby, repealed." (§ 8) As may be seen, the power of the Legislative Assembly of Puerto Rico to establish a workmen's accident

compensation system in the maritime zone stems from § 8 of the Organic Act of 1917 and left in force by the Federal Relations Act of 1950. As the state of law which stems from the possible collision between the federal laws of admiralty and maritime compensation and our Workmen's Accident Compensation Act requires a review of the federal legislation and the case law applicable, we shall try a brief synthesis of said institution.

The power of the Congress of the United States to establish a compensation system for maritime damages flows from § 2 of Art. III of the Constitution of the United States of America, which provides: "The judicial power shall extend to all cases . . . of admiralty and maritime jurisdiction" in accordance with § 8 of Art. I of said Constitution, which provides: "The Congress shall have Power . . . To make all Laws which shall be necessary and proper for carrying into Execution . . . all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

By virtue of said power, Congress enacted, on April 22, 1908, the Federal Employers' Liability Act which specifically referred to public carriers engaged in interstate commerce by railroad, the constitutionality of which was sustained. It was endeavored to apply said law to maritime workers and the Supreme Court did not permit it. On March 4, 1915 the Jones Act was enacted, granting to seamen a cause of action similar to that granted to railroad employees, and its constitutionality was sustained.

Notwithstanding that the provisions of the Constitution of the United States which we have quoted, granted Congress jurisdiction over all matters related to admiralty and maritime compensation, some states tried to adopt maritime labor compensation laws. An Act of 1914 of the State of New York produced the first important decision of the Supreme Court of the United States on the present case:

Southern Pacific Company v. *Jensen,* 244 U.S. 205, 61 L. Ed. 1086 (McReynolds, 1917) 215 U.S. 1098 L. Ed. The case of Jensen established the rule that any state legislation on maritime compensation would contravene the essential purpose of the Constitution to maintain within the proper harmony and uniformity all maritime legislation, referring to international as well as to interstate relations. In view of said decision Congress decided to amend § 9 of the Judiciary Act of United States of 1789 by adding to the saving to suitors clause as to common-law remedies the remedies under the workmen's compensation laws of any state. Said amendment by addition was held unconstitutional in the case of *Knickerbocker Ice Co.* v. *Stewart,* 253 U.S. 149, 160-166 64 L. Ed. 839-841 (McReynolds 1920). The case of *Knickerbocker* established the rule that although § 9 of the Judicial Code had granted to the United States district courts cognizance of all civil causes of admiralty and maritime jurisdiction, Congress had exceeded its authority in sanctioning actions by the states under their Workmen's Compensation Laws for employees engaged in maritime work because Congress could not transfer its legislative power to the states because by nature this is non-delegable.

Once more Congress intended, in 1922, to legalize the state maritime compensation by making an addition to the saving clause and also saving to claimants for compensation "for injuries to or death of persons other than the master or members of the crew of a vessel their rights and remedies under the workmen's compensation law of any State". Said amendment by addition was held unconstitutional in the case of *State of Washington* v. *W. C. Dawson and Company,* 264 U.S. 219, 225-227; 68 L. Ed. 646, 651-653 (McReynolds 1924). In the case of *Dawson* the Supreme Court tried to untie the gordian knot, observing: "Without doubt Congress has power to alter, amend or revise

the maritime law by statutes of general application embodying its will and judgment. This power, we think, would permit enactment of a general employers' liability law or general provisions for compensating injured employees; but it may not be delegated to the several States. The grant of admiralty and maritime jurisdiction looks to uniformity; otherwise wide discretion is left to Congress." From this judicial note stemmed the Longshoremen's and Harbor Workers' Compensation Act enacted by the Congress of the United States in 1927.

So that, in the mosaic of the federal laws applicable to to maritime compensation which may have some relation to us we must emphasize the Jones Act of 1915 and the Longshoreman's and Harbor Worker's Compensation Act of 1927. A study of the different laws applicable to other risks or maritime or quasi maritime injuries, passengers, visitors, etc., is made in *Morris, Maritime Personal Injuries* (Baker Voorhis & Co., Inc., 1959 ed.). The moderate application we have made up to now of the historic-evolutive method is for the purpose of placing in the right atmosphere the judicial rules applicable to Puerto Rico, which we shall specify below:

The first case which acknowledges the power of the Legislative Assembly of Puerto Rico pursuant to the Organic Act of 1917 to adopt a workmen's compensation system in our maritime zone is the case of *Lastra et al.* v. *New York & Porto Rico S.S. Co.*, 2 F.2d 812, 813-814 (Anderson 1924). In said case the following pronouncements are made: (1) that Puerto Rico, not having been incorporated into the United States, the Constitution of the United States of America does not apply in Puerto Rico by its own virtue—*ex propio vigore;* (2) that Congress having failed to provide expressly that the admiralty provisions of the Constitution of the United States shall extend to Puerto Rico, said provisions do not extend to Puerto Rico

in the same manner as the uniform provisions in § 8 of Act I of the Constitution of the United States relating to taxes, duties, imports and excises, citing the case of *Downes* v. *Bidwell*, 182 U.S. 244, 45 L. 2d 1088 (Brown, 1901); (3) that §§ 7 and 8 of the Organic Act of 1917 grant the Puerto Rican Legislature a general local legislative power over the navigable waters of Puerto Rico; (4) that the fact that in Puerto Rico a District Court of the United States has been established to govern over cases of admiralty and maritime jurisdiction, does not import that the Congress of the United States has extended to Puerto Rico the substantive rights and remedies of the provisions on admiralty and maritime jurisdiction contained in the Constitution of the United States, and that two contemporary facts, such as the amendments by addition to the Judicial Code of 1789, previously analyzed, show the intent of Congress in sustaining state legislation on workmen's compensation in the maritime zone.

In relation to the development of the doctrine of the effectiveness or non-effectiveness of the Constitution of the United States in Puerto Rico, see: § 2 of the Federal Relations Act of 1950 as to subdivision 1 of § 2 of Art. IV of the Constitution of the United States in relation to the rights, privileges and immunities of the citizens of the United States in Puerto Rico; *Mora* v. *Mejfas*, 206 F.2d 377, 382, 386-388 (Magruder 1953) referred to the clause of the due process of law; *Figueroa* v. *People of Puerto Rico*, 232 F.2d 615, 619 (Magruder 1956) referred to the clause of the due process of law; see also, as to this last matter, *Balzac* v. *Porto Rico*, 258 U.S. 298, 312-313, 66 L.ed. 627, 634 (Taft 1922); *Detres* v. *Lions Building Corporation*, 234 F.2d 596, 600 (Swaim 1956) referring to the diversity of citizenship of the citizens of Puerto Rico within the meaning of said diversity clause of the federal code of civil procedure.

Under the authority of the case of *Lastra* this Court decided the case of *United Porto Rican Sugar Co.* v. *District Court*, 44 P.R.R. 904, 906-907 (Wolf 1933) by which compensation was granted to a seaman who died in his employers tug not far from the port of Humacao. This Court refused to apply the Jones Act and applied our Workmen's Accident Compensation Act following the reasoning in the case of *Lastra*.

The second decision rendered by the Court of Appeals First Circuit, *Guerrido* v. *Alcoa Steamship Co.*, 234 F.2d 349, 352-355 (Maris 1956) in the case of a longshoreman contracted by a stevedoring company, of which defendant Alcoa Steamship Company came to be a mere charterer, some of the pronouncements of the case of *Lastra* were substantially modified, but the power of the Legislative Assembly of Puerto Rico to adopt a system of workmen's compensation in our maritime zone was sustained. In the case of *Guerrido* it is stated that: (1) since Puerto Rico is neither a state of the union nor a territory which has been incorporated into the union preliminary to statehood it is true that all the provisions of the Federal Constitution are not necessarily in force, but under the same Constitution the Congress of the United States had power to extend to Puerto Rico, through the Organic Act of Puerto Rico of 1900 the maritime law in force in the United States; that Puerto Rico having been included in the Act of 1906 in the six great districts of domestic shipping laws the intention of Congress to preserve a uniform maritime law for all the states as well as the incorporated territories and the territories not destined for incorporation is evident; (2) the Organic Act of 1900, in retaining under the jurisdiction of the United States the navigable waters of Puerto Rico, as a matter of fact, established that the general rules of maritime law as understood in the United States followed the flag to Puerto Rican waters; (3) that although §§ 7 and 8

of the Organic Act of 1917 had placed the navigable waters of Puerto Rico under the jurisdiction of the Legislature of Puerto Rico, said power must be construed in accordance to the former legal status created by the Congress of the United States, it being proper to conclude: "that the rules of the admiralty and maritime law of the United States are presently in force in the navigable waters of the United States in and around the island of Puerto Rico to the extent that they are not locally inapplicable either because they were not designed to apply to Puerto Rican waters or because they have been rendered inapplicable to these waters by inconsistent Puerto Rican legislation"; (4) that the Workmen's Accident Compensation Act of the Commonwealth of Puerto Rico covers maritime workers except to the extent that it may have been superseded as to any class of maritime workers by compensation legislation passed by Congress and intended to be applied to all navigable waters of the United States.

In the third decision rendered by the United States Court of Appeals for the First Circuit, *Fonseca* v. *Prann,* 282 F.2d 153, 155-157 (Woodbury 1960) in the case of some seamen-crew members of a ship property of the employer who contracted them, some of the pronouncements of the case of *Guerrido* were if not modified, at least, duly explained. Let us see: That "whatever the actual status of the Commonwealth of Puerto Rico may be in all its details, its present status is certainly not that of a State of the United States. Nor is it even that of a territory incorporated into the union preparatory to statehood . . . As such the Government of Puerto Rico has such powers as Congress from time to time has seen fit to give it . . . the broad power of Congress under Article IV, §3, [Constitution of the United States of America] to legislate for national territory is limited under the doctrinal territory is limited under the doctrine of the Insular Cases, so-called, only by funda-

mental constitutional principles." (as we have seen, to violations of the due process of law); that no basic principle of the Constitution prevents Congress from giving Puerto Rico jurisdiction over its own waters; (2) that pursuant to the conclusion reached in the case of *Lastra*, followed in the case of *Guerrido*, §§ 7, 8 and 37 of the Organic Act of 1917, which are still in force and for a part of the Puerto Rican Federal Relations Act give the Legislature of Puerto Rico general legislative power over the waters of Puerto Rico; (3) that although it is certainly true that neither the Jones Act nor the general maritime law on injuries related to unseaworthiness; Longshoremen's and Harbor Workers' Compensation Act of 1927, are inherently inapplicable in Puerto Rico, there is nothing in said laws specifically making its provisions applicable to Puerto Rico, for which the principle in the cases of *Lastra* and *Guerrido* that the Legislature of Puerto Rico is empowered to enact legislation inconsistent with the Jones Act and the general maritime law afore described should be followed; (4) that the Legislative Assembly of Puerto Rico has exercised said power in enacting the Workmen's Accident Compensation Act.

The doctrine laid down in the *Fonseca* case has the additional authority that the writ of certiorari requesting its review was denied by the Supreme Court; *Fermin Fonseca Flores* v. *Robert R. Prann*, 365 U.S. 860, 5 L.ed. 2D 822.

In the fourth decision rendered by the Court of Appeals for the First Circuit, *Waterman Steamship Corporation* v. *Rodriguez*, 290 F.2d 175, 179-180 (Maris 1961), the case of a longshoreman contracted by a stevedoring company to unload cargo from an unseaworthy vessel which did not belong to his employer, the following ratification and explanations and in relation to the afore-mentioned cases were made (1) that, as it was held in the case of Guerrido, "The rules of the admiralty and maritime law of the

United States are presently in force in the navigable waters of the United States in and around the island of Puerto Rico to the extent that they are not locally inapplicable either because they were not designed to apply to Puerto Rican waters or because they have been rendered inapplicable to these waters by inconsistent Puerto Rican legislation"; (2) that as it was held in the *Fonseca* case, the Workmen's Accident Compensation Act of Puerto Rico has rendered the general maritime law of unseaworthiness inapplicable to Puerto Rican waters so far as concerns suits by injured seamen against their employers; (3) that as it was held in the *Guerrido* case, the general maritime law of the United States of unseaworthiness has been applicable to Puerto Rican waters without the express provision of Congress on this matter, but subject to be superseded as a whole or in part by Puerto Rican legislation.

As may be seen, the decision of the Court of Appeal for the First Circuit seems to be that although the Organic Act of 1917 granted the government of Puerto Rico jurisdiction over its navigable waters, in the absence of Puerto Rican legislation to that effect, the rules of admiralty and the general maritime law of the United States are at present in force in Puerto Rico until superseded by any inconsistent Puerto Rican legislation, as our Workmen's Accident Compensation Act, because the "empty space" is covered by the previous provisions of the Organic Act of 1900.

Anyway, because of the deference due to the decisions of the Court of Appeals for the First Circuit, we shall try to decide whether this case should fall within the rules of admiralty. There being an obvious difference between maritime tort and a tort without implied fault as the one produced by a labor accident, it is unquestionable that the rule of admiralty which would bind us to contrast the law of the place where the offense occurred, —*lex loci delicit*

commissi— with the law in our forum, would not be applicable in this case. The facts show that the laborer who suffered the accident went ashore to buy some personal articles and when returning to the ship he fell on the gangplank. There is no issue whatsoever as to the place where the contract is signed —*lex loci contractus*— because the liability of the policy tries to be effective in the place of issuance. As to the nationality of the owner of the owner of the ship, there is no doubt that the ship belongs to a corporaiton organized under the laws of Puerto Rico. As to the flag state, although the ship was of Panamanian registry, we would not feel bound to apply any provision of the Panamanian law on this particular. It seems Panama has a law which makes compulsory the submission to the Panamanian forum in all claims against the owner of the ship. As the Panamanian legislation favors the ship owner over the laborer many ship owners try to obtain their registration in Panama. The Supreme Court of the United States has refused to acknowledge said supremacy of the Panamanian law against the more favorable compensations of the North American states: *Lauritzen* v. *Larsen*, 345 U.S. 571, 590, 97 L.ed. 1254, 1272 (Jackson 1953), besides, this case does not deal with the claim of a seaman against the owner of the ship. Since it concerns an accident which occurred in the port of St. Thomas, we should not consider either the inaccessibility of the foreign forum which sometimes seeks its best solution in the courts of admiralty. As a question of reality, if we had to apply some of the patrimonial "maritime uses" of the island of Puerto Rico, recognized as they are by the admiralty law itself, the sea that separates our island from the Virgin Islands, has always been considered a "Puerto Rican lake"; in relation to the *lex forum* it is not a matter of applying the law of the Virgin Islands —an unincorporated territory— to a quasi judicial organism of Puerto Rico, or

vice versa, nor of deciding which of the two laws, in being more favorable, could better help to create an atmosphere forebearance which the maritime countries try to foster to avoid retaliation against their own crews.

As to whether the Jones Act or the Longshoremen's and Harbor Worker's Compensation Act of 1927 of the Congress of the United States are applicable, the ruling in the case of *Fonseca* v. *Prann, supra,* which we shall apply as our local rule in this case, convinces us that said laws would not be applicable in view of our Workmen's Accident Compensation Act.

We have reached the concluson that in a case like this, a simple case of coverage within a labor policy, we must adopt the practical criterion followed by the Supreme Court of the United States in the cases of *Cudahy Packing Co.* v. *Parramore,* 263 U.S. 418, 423-424, 68 L.ed. 366, 369 (Sutherland 1923) and *Bradford Electric Light Co.* v. *Clapper,* 286 U.S. 145, 157-158, 76 L.ed. 1026, 1034 (Brandeis 1932), and decide that this case deals with a single labor-management relationship and said relationship creates a definite status which is not altered by the fact that the accident occurred outside the territorial limits, and which could have been recognized by the State where the labor relationship was created. The case in which a state compensates an accident occurred in another state or nation is not as unusual as it seems—*Biggs* v. *Theis,* 369 P.2d 32, 35 (Castles 1942). In the case of *Saunders,* 136 A. 722, 723 (Wilson 1927), a laborer employed in Maine and covered by the labor compensation law of said state, was compensated for an accident he suffered in Canada, where he went to work by orders of his employer. The case of *Saunders* has been cited with approval in the case of *Lynch,* 183 N.Y. 834, 835 (Crosby 1933); see also *Cullamore* v. *Groneweg & Schoentgen Co.,* 257 N.W. 561

(Stevens 1934); *Hilding* v. *Department of Labor and Industries,* 298 P. 321, 323 (Beeler 1931); *In re Byrne,* 86 P.2d 1095, 1098 (Riner 1939).

The Industrial Commission in declaring itself without jurisdiction in this case, applied the criterion that our Workmen's Accident Compensation Act does not cover an accident occurred outside our territorial limits. The fact that the employer in this case paid premiums also computed on the wages paid to the employer's maritime crew when it worked outside of Puerto Rico is not argued. The power of the Legislature of Puerto Rico to provide medical assistance and hospitalization to our migrating laborers who are injured outside of Puerto Rico if they return to our country, Act. No. 77 of June 23, 1958 is not argued. There is evidence that the benefits of our workmen's compensation has been extended to some of our officials called to work outside of Puerto Rico for accidents suffered outside our territory. The concept of "extraterritoriality" carries impliedly with it the invasion of the juridical sovereignty of another state, city or political body. When said invasion is not produced, it can hardly be considered that the application of a law has been given extraterritorial effect.

We agree with the statement of the petitioner that the fact that the Manager of the State Insurance Fund declared himself without jurisdiction is equivalent to declaring the petitioner an uninsured employer.

The decision of the Industrial Commission will be reversed.

Appendix B-3

IN THE SUPREME COURT OF PUERTO RICO

JULIA, PABLO *et al.*, surnamed
CORTIJO WALKER,
Plaintiffs
v.
PUERTO RICO WATER RESOURCES AUTHORITY,
Defendant and Third-Party Plaintiff-Appellant,
ANASTACIO RODRIGUEZ CUBANO,
Third-Party Defendant-Appellee

Division composed of Mr. Justice Belaval, as Chief Judge of Division, Mr. Justice Hernandez Matos and Mr. Justice Santana Becerra.

MR. JUSTICE SANTANA BECERRA delivered the opinion of the Court.

San Juan, Puerto Rico, December 18, 1964.

On May 13, 1960, workman Julio Eduardo Cortijo Walker was electrocuted in the course of his employment. The State Insurance Fund considered the case as a labor accident covered by the Workmen's Accident Compensation Act, and on January 17, 1961 it entered a decision awarding compensation in the amount of $5,184 to minor Victor Lanzo, brother of the deceased laborer. It ruled that the said minor was the only person entitled to receive the benefits of the Act by reason of dependence. The Fund held that the workman's death occurred in the course of the normal and regular duties of his employment when he was electrocuted by an uninsulated galvanized cable which he was carrying in his hands and made contact with high-voltage electric current.

On August 29, 1961, plaintiffs Julia, Pablo, Edwin, Victoria, Isolina, Jose Amalio, Angel and Victor Vicente, all

surnamed Cortijo Walker, filed a claim for damages for this death against the Water Resources Authority. They alleged that the workman died without leaving any ascendants or descendants and was survived by plaintiffs, some of whom "depended for their subsistence" on what the laborer provided to them; that his death was due to the sole and exclusive negligence of defendant Water Resources Authority by its failure to adopt due precautions and to foresee, as it should have, that uninsulated high tension wires endanger the lives of third persons; and that as a result of the accident plaintiffs have suffered damages and mental and moral anguish.[1] The Authority answered and admitted the occurrence of the accident and denied the other facts. It alleged as a defense that the accident was due to the exclusive negligence of the workman, or of the workman and third persons, and if no negligence was committed, that this was a fortuitous and unfortunate accident.

Approximately two years later, on August 26, 1963, defendant filed a third-party claim against employer Anastacio Rodriguez Cubano alleging that he was negligent and holding him responsible for the accident. It alleged that the employer permitted the construction of works near defendant's power lines without taking due precautions so that no one would come in contact with them, knowing or being bound to know, the hazard involved, and without notifying the Authority of the Construction of such works near the power lines in order that it could take action in such a situation; and that he acted in violation of an independent, express or implied duty imposed by law toward the Authority. It prayed for judgment against the third-party defendant to indemnify plaintiffs, or to

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[1] The minor, adjudged sole beneficiary under the Workmen's Accident Compensation Act, did not sue.

pay to the Authority any amount which the latter would be bound to pay the former.

The employer and third-party defendant filed a motion to dismiss and a motion for summary judgment alleging nonliability in law. He attached to his motion for summary judgment a sworn statement to the effect that he was an employer insured with the Fund under a policy which covered the workman, and that in addition to the amount of $5,184 awarded by the Fund an additional amount of $5,000, the product of a group policy which the employer carried for his employees, was paid to the beneficiaries. He included a certified copy of the decision of the Fund ruling that this was a labor accident covered by the Act. The defendant objected to the motion for summary judgment, but did not disclose any statement or evidence. The court rendered summary judgment dismissing the third-party claim against the employer. That summary judgment is here on review.

The Workmen's Accident Compensation Act of 1935 (Sess. Laws, p. 250) provides in § 20 that when an employer insures his workmen or employees in accordance with that Act, the right to compensation therein established *"shall be the only remedy against the employer,"* and in those cases not covered by the Act the liability of the employer shall continue to be the same as if that Act did not exist. Section 16 of the Act is to the same effect as to the employer's liability when the accident is not covered by that special statute, and refers such liability to the Civil Code, § 1802.[2]

Section 31 provides that in cases in which the injury, disease or death entitling the workman, employee, or his beneficiaries to compensation under the provisions of the Act has been caused under circumstances making a third

[2] See the Act of March 1, 1902, on employer's liability for negligence in labor accident cases.

party liable for such injury, disease or death, the workman or employee or his beneficiaries may claim and recover damages from the third party liable for such injury, disease or death. This same section subrogates the State Insurance Fund in the rights of such workman or employee or of his beneficiaries in those cases, and it may bring action in behalf of the workman or employee or his beneficiaries against the third party. If the Fund does not subrogate itself and fails to bring action against the third party, the workman or employee or his beneficiaries shall nonetheless be at liberty to bring such action of damages.

Under the system of our Workmen's Accident Compensation Act, it has been held in this jurisdiction that the injured workman or employee or his beneficiaries may not demand compensation from the employer under the common-law liability rules, in our case, the Civil Code. The compensation provided by the statute is the only remedy against his employer available to the workman or his beneficiaries, provided the case comes within the ambit of the Act. *DeJesus* v. *Osorio,* 65 P.R.R. 601, 603; *Onna* v. *The Texas Co.,* 64 P.R.R. 497, 500; *Rivera* v. *Industrial Commission,* 67 P.R.R. 526, 528; *Fonseca* v. *Prann,* 282 F.2d 153, 157, *cert. denied,* 365 U.S. 860. When the compensation statute does not cover the case, see *Arroyo* v. *Plaza Provision Co.,* 68 P.R.R. 889, 892.

In view of the historical experience of the workman's difficult uphill strife to obtain compensation in labor accidents, when he was bound to establish convincingly acts of negligence of his employer or of another fellow workman and the employer could in turn allege as a defense his own negligence or carelessness, a historical situation which has so often forsaken the workman or his family, the lawmaker elected in this case an integrated system on the basis of a social, objective liability in this sphere

of labor-management relationship. It could have been at the expense of subjecting the workman or his family as respects the employer to reasonable recovery of statutory compensation solely on the basis of a criterion of dependence, as compared with a greater compensation and a greater relationship under the general civil-law rules, and of depriving him of the latter. The lawmaker made his selection from among factors of convenience, and applied an integrated social system of objective liability. The immunity afforded to the employer from other acts or remedies—§ 20—in the cases covered by the statute, should have been essential to the objective liability system adopted as a means of encouraging every employer to take out insurance, without which the system could not be effective.

This legislative criterion of granting to the employer immunity from remedies other than the compensation became even more evident in 1935 when the present statute was enacted. The 1928 legislation—Act No. 85—which was substituted by the present legislation, contained a similar provision— § 33—declaring the statutory compensation the only remedy against an employer who insured his workmen. Notwithstanding that provision, Act No. 85 granted in § 44 an action of damages in favor of the workman or his heirs against an employer when the injuries were caused by an illegal act or *criminal negligence* of his employer, in which case the workman or his heirs could waive the statutory benefits. Similarly, § 45 authorized the Industrial Commission to subrogate itself in the right of the workman or his heirs and to recover damages from *an employer* responsible for the injury caused by his illegal act or *criminal negligence.* Those provisions of the former statute were superseded since 1935 when the present Act was adopted, which shows a specific and definitive criterion of the lawmaker not to grant general

action of damages of any kind against the employer, regardless of his actions in the Aquilian sphere and the degree of fault or negligence, with the exception of those situations provided in § 15—uninsured employer-in which, notwithstanding the benefits of the Act granted to the workman or his family, they may sue the employer in tort as an additional section for failure to take out insurance. This is the only case.

With the foregoing as background, let us examine the petition. A claim for damages against the employer by the beneficiaries or family of the deceased laborer is not under our consideration in this litigation. In a situation such as this this Court has already pronounced itself. This notwithstanding, what the petition actually involves in the last instance is that same employer's tort liability to which we have referred.

The beneficiaries of the workman have sued appellant Authority alleging that its negligence caused the death. Appellant holds the employer liable as third-party defendant on the ground of his alleged negligence, alleging that he should indemnify plaintiffs. In the alternative, which would amount to the same thing, to pay to appellant the whole or part of any amount which the latter may be bound to pay to plaintiffs. The insured employer is placed in the position of having to contest and defend himself against a claim for damages for the death of one of his employees in the course of employment, based on his negligence.

A third-party claim against the employer under the circumstances of the record—insured employer and the accident covered by the compensation statute—is not available in law under statutory provisions such as § 20, nor on the theory of "contribution" in which a joint tortfeasor would be liable to another tortfeasor, nor on the theory of the right of a defendant in tort to be "indemnified" by a

third-party defendant in connection with the facts.[3] The great majority of courts has upheld the impropriety of such a third-party claim against the employer where there is an exclusive-remedy clause such as that of our statute. In referring to the matter, Professor Larson sums up the ground of such impropriety according to the judicial rule: The employer is not liable to the workman in tort; therefore, he can not be a joint tortfeasor with the third person and third-party plaintiff. The liability that rests upon the employer is an absolute liability irrespective of negligence, and this is the only kind of liability that can devolve upon him whether he is negligent or not. The workman's claim or remedy against his employer is solely for the statutory benefits; his claim against the third party is for damages. Both causes of action are in law different in kind and they can not result in a *common* legal liability.[4]

Apart from the refined concept, there is a more simple common-sense ground which is also taken into account. To permit the third-party claim would amount to doing indirectly what the lawmaker has forbidden to be done directly. It would amount to considering the employer's

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[3] Although the English common-law rule prevailing in the States and in the federal jurisdiction has been not to recognize—in the absence of legislation—the right of a tortfeasor to require another tortfeasor to contribute to the payment of the indemnity, see *Halcyon Lines* v. *Haenn Ship Corp.*, 342 U.S. 282, 285; and although this Court has declared and established the solidary liability of each tortfeasor toward the injured party, *Prado* v. *Quinones*, 78 P.R.R. 309; *Rivera* v. *Great American Indemnity Co.*, 70 P.R.R. 787; *Cruz* v. *Frau*, 31 P.R.R. 87; *Cubano* v. *Jimenez*, 32 P.R.R. 155, in *Garcia* v. *Government of the Capital*, 72 P.R.R. 133, we adopted in this jurisdiction the rule of "contribution." In ordinary cases this rule can not govern in situations such as those in the case at bar because of § 20.

[4] 2 Larson, The Law of Workmen's Compensation 230 *et seq.* (1961), up to date Supp. 1963. See *American Mut. Liability Ins. Co.* v. *Mathews*, 182 F.2d 322 (C.A. 2); *Slattery* v. *Marra Bros.*, 182 F.2d 134 (C.A. 2), *cert. denied*, 341 U.S. 915.

negligence by the rear door of a third-party claim and holding him liable in tort for such negligence.

Appellant contends that its third-party claim against the employer is based "on a jurisprudential exception" to the employer's immunity. It argues that its third-party claim is not based on the right to claim "contribution" from a party which has been jointly negligent with another in causing the damage, but that its right to claim from a third party is based "on the right to be 'indemnified' for the breach of a separate and independent duty of the employer toward a third party expressly and impliedly created by law." And it explains that its right to claim from the employer "is not exactly for damages but for the right to be reimbursed or 'indemnified', not by reason of the injuries to the injured workman but as a result of the breach of an obligation or separate and independent duty of the employer toward the third party."

After a study of the case law cited by appellant, we are not convinced that there is a well-settled "jurisprudential exception" to the employer's immunity. We repeat, as stated at the outset, that the prevailing doctrinal rule is that such statutory immunity can not be defeated through the indirect means of the third-party claim. Apart from the fact that the technical distinction between the concepts of "contribution" and "indemnity" at times, and for all practical purposes, may seem to be cutting it a bit fine, the case of *American District Telegraph Co.* v. *Kittleson,* 179 F.2d 946 (C.A. 8), which would lend some support to appellant's position, was decided on the basis of a rule which does not govern in our system and which seemingly has not been well settled either, on the basis of the presumption of *implied* liability of law in which a joint tortfeasor responds to another tortfeasor if the negligence of the former was the principal or primary negligence and that of the latter the secondary.

Other cases invoked are either admiralty cases governed by the particular norms of that sphere of law, or the alleged right of "indemnity" is based on a *contractual relationship,* or is governed by statutes providing for the reciprocal liability relationship between two mutual wrongdoers. Larson, cited by appellant, makes a comprehensive exposition of the matter in *op. cit. supra* at p. 231 *et seq.* However, Professor Larson is of the opinion that there is much fiction and artificialness in those distinctions, and advises, which is the proper thing, that this problem is for the lawmaker and not for the courts to speculate. See cases cited above and *Royal Indem. Co.* v. *Southern Cal. Petroleum Corp.,* 353 P.2d 358 (N.M.) in which it was clearly said that the exclusive remedy against the employer afforded by the compensation statute defeats the common-law right of "indemnity", *William Bros. Lumber Co.* v. *Meisel,* 68 S.E.2d 384 (Ga.); *Farren* v. *New Jersey Turnpike Authority,* 106 A.2d 752 (N.J.); *Hunsucker* v. *High Point Bending & Chair Co.,* 75 S.E.2d 768 (N.C.); *Urda* v. *Pan American World Airways,* 211 F.2d 713 (C.A. 5), where an employee died in Brazil in the course of employment, and after his widow received compensation under the Florida Workmen's Compensation Act, a federal court rejected her cause of action of damages under the rule of *"lex loci delicti"* which she had under the Brazilian law, on the ground that the Florida statute granted an exclusive remedy to the employer.

Whether or not the distinction is good or effectual, or whether or not the common-law rule of "indemnity" or the primary or secondary presumption of negligence governs in this jurisdiction, it is unquestionable that under any of the concepts invoked, or under any of the concepts whereby the employer may be brought in, the undeniable fact would always be at bottom that any liability imposed upon the employer as third-party defendant, whether for

damages properly, for "contribution," or for "indemnity", would have its origin in a death declared a labor accident. We are not going to open a gap in the compensatory system by "jurisprudential exception," and in any event let the lawmaker have his say.

The judgment dismissing summarily the third-party claim in this case was proper and will be affirmed.

Appendix B-4

IN THE SUPREME COURT OF PUERTO RICO

R-64-29 Review

ELIEZER MARCANO TORRES,
PLAINTIFF

v.

PUERTO RICO WATER RESOURCES AUTHORITY,
DEFENDANT-PLAINTIFF AGAINST THIRD-PARTY-PETITIONER

SALVADOR L. MORALES,
THIRD-PARTY-DEFENDANT-APPELLEE

Division composed of Mr. Justice Blanco Lugo, as Chief Judge of Division, pro-tempore, Mr. Justice Davila and Mr. Justice Ramirez Bages.

Separate opinion of MR. JUSTICE RAMIREZ BAGES.

San Juan, Puerto Rico, January 20, 1965

The question raised in this proceeding—as the one raised in *Cortijo* v. *P.R. Water Resources Authority,* decided December 18, 1964—requires us to determine whether in the case of an injured worker who, after receiving compensation from the State Insurance Fund, files a complaint against a third party, that is petitioner Puerto Rico Water Resources Authority, can the latter claim indemnization by means of a third-party claim against the employer of the injured worker on the ground that said employer allowed the construction of a building in violation of the provisions of the Building Construction and Repair Industrial Safety Regulations (29 R. & R.P.R. §§ 326-29, Regulation 25(a), promulgated under Act No. 112 of May 5, 1939—29 L.P.R.A. §§ 322-323 and 335—), as a result of which workman Eliezer Marcano was injured, even though § 20 of the Workmen's Accident Compensation Act provides that the right established in said Act "to obtain

compensation shall be the only remedy against the employer."

In the case of *Cortijo, supra,* under circumstances similar to those at bar, we held that any action against the employer is inappropriate because under these circumstances the remedy provided by the Workmen's Accident Compensation Act is the "only remedy against the employer."

Although we agreed that the employer had no liability, we believe that we should set forth the grounds for this conclusion.

In cases like this it has been sought to hold the employer liable either by invoking the right of contribution referred to in *Garcia* v. *Government of the Capital,* 72 P.R.R. 133 (1951), or the right of indemnity provided by § 1054 of the Civil Code (31 L.P.R.A. § 3018).

In view of the provisions of § 20 of the Compensation Act, a person can not claim the right of contribution against an employer when that person is liable for the injuries suffered by an employee, together with the workman's employer, in case such injuries are compensable under said Act. *Halcyon Lines* v. *Haenn Ship Corp.,* 342 U.S. 282 (C.A. 3, 1952); *Fidelity & Casualty Co. of N.Y.* v. *J. A. Jones Const. Co.,* 325 F.2d 605 (C.A. 8, 1963); *Bertone* v. *Turco Products,* 253 F.2d 726 (C.A. 3, 1958); *Peak Drilling Co.* v. *Halliburton Oil Well Cement Co.,* 215 F.2d 368 (C.A. 10, 1954); *Hendrickson* v. *Minnesota Power & Light Company,* 104 N.W.2d 843 (Minn. 1960); *Employers Mutual Liabil. Ins. Co.* v. *Griffin Constr. Co.,* 280 S.W.2d 179 (Ky. 1955); *Farren* v. *New Jersey Turnpike Authority,* 106 A.2d 752 (N.J. 1954); "Effect of Workmen's Compensation Act on Right of Third Person Tortfeasor to Recover Contribution from Employer of Injured or Killed Workman," 53 A.L.R.2d 977. The reason is that when two persons are jointly liable in tort, logically one can not recover contribution from the other if the latter

has been relieved from the claim for the tortious act by a personal defense such as the provision of § 20 of the Workmen's Accident Compensation Act of Puerto Rico.

In the instant case it is alleged, however, that the employer of the injured workman is not relieved by the provision of § 20 of the Workmen's Accident Compensation Act, from an indemnity claim filed by a third person on the wrongful conduct of said employer in regard to that third person.

Federal courts and of state jurisdictions in the United States have upheld the right to recover indemnity in cases of longshoremen employed by a contractor to unload the vessel of a third party when the stevedore received injuries while working in the vessel, not caused by negligence on the part of his employer but due to defective equipment supplied by the latter (the workman received compensation under the Longshoremen's and Harbor Workers' Compensation Act, and afterwards sued and recovered damages from the owner of the vessel), either under the theory of the contractor's implied warranty of workmanlike service, *Italia Soc.* v. *Ore. Stevedoring Co.*, 376 U.S. 315 (1964), or that the contractor had breached his contract with the owner of the vessel to furnish labor and supervision "for the proper and efficient conduct of the work" or had breached his contractual undertaking to perform with reasonable safety. *Weyerhaeuser S.S. Co.* v. *Nacirema Co.*, 355 U.S. 563 (1958); *Ryan Co.* v. *Pan-Atlantic Corp.*, 350 U.S. 124 (1956). In these cases the Compensation Act provided that "the liability of an employer * * * shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer * * * on account of such injury or death." *Horton* v. *Moore-McCormack Lines*,

Inc., 326 F.2d 104 (C.A. 2, 1964); *Damanti* v. *A/S Inger*, 314 F.2d 395 (C.A. 2, 1963); *Konindlyke Nederlandsche, etc.* v. *Strachan Shipping Co.*, 301 F.2d 741 (C.A. 5, 1962); *Northern Natural Gas Company* v. *Roth Packing Company*, 323 F.2d 922 (C.A. 8, 1963); *Crawford* v. *Pope & Talbot, Inc.*, 206 F.2d 784 (3 Cir. 53); *Hart* v. *Simons*, 223 F. Supp. 109 (D.C.E.D. Pa. 1963); *Blackford* v. *Sioux City Dressed Pork, Inc.*, 118 N.W.2d 559 (Iowa 1962); *Moroni* v. *Intrusion-Prepakt, Incorporated*, 165 N.E.2d 346 (Ill. 1960); *San Francisco U. Sch. Dist.* v. *California Bldg. Main. Co.*, 328 F.2d 785 (Cal. 1958); *Baugh* v. *Rogers*, 148 F.2d 33 (Cal. 1944); McCoid, *The Third Person in the Compensation Picture: A study of the Liabilities and Rights of Non-Employers*, 37 Tex. L. Rev. 389 (1958-59); *The Exclusive Remedy Provision of Workmen's Compensation Acts — Distribution of Risk Between a Concurrently Negligent Employer and Third Party*, 25 U. Chi. L. Rev. 522 (1957-58); *Recent Developments in the Iowa Workmen's Compensation Law Where Negligent Third Parties are Involved*, 37 Iowa L. Rev. 84 (1951-52).

In the state of New York, even in the absence of a contractual relation, the right of indemnity has been held when the employer has been actively negligent and the third party from whom the worker claimed did not contribute to the happening of the accident through any act of affirmative negligence on his part, or when there exists factual disparity between the delinquency of the employer and that of the third party and when the evidence shows that the employer is the primary wrongdoer. In this case, the defense that liability of employer was exclusive under a compensation statute was rejected in terms similar to those hereinbefore stated. *McFall* v. *Compagnie Maritime Belge (Lloyd Royal) S.A.*, 107 N.E.2d 463 (N.Y. 1952); *Rich* v. *United States*, 177 F.2d 688 (C.A. 2, 1949); *Roberson* v. *Bitner*, 221 F. Supp. 279 (D.C.E.D. Tenn. 1963);

Great Northern Railway Co. v. *Bartlett & Co. Grain,* 298 F.2d 90 (C.A. 8, 1962); *Shell Oil Company* v. *Foster-Wheeler Corporation,* 209 F. Supp. 931 (D.C.E.D. Ill. 1962); *Krambeer* v. *Canning,* 184 N.E.2d 747 (Ill. 1962).

In II-LARSON, *The Law of Workmen's Compensation* 233-238, §§ 76.30 *et seq.*, it is stated that the origin of an indemnity claim against an employer for damages compensable under a workmen's accident compensation Act, depends exclusively on whether the liability is due to the damages for which compensation is provided. Indemnity is compensable in cases such as Italia Soc., *supra,* Weyerhaeuser, *supra,* Ryan, *supra,* and others, on the basis of obligation or warranty of a contractual nature, because the action against the employer is not due to the damages caused, inasmuch as its origin can be traced to a specific contract between the third party-plaintiff and the employer. But, in cases of an implied obligation of a primary wrongdoer for a tortious act to reimburse the secondary tort-feasor, even though the form of the action is not *ex delicto,* the origin of the action is the damage caused and the concurring circumstances, and the liabilities arising therefrom and the obligation to indemnify depends exclusively on the comparison of the relation of both parties with respect to the damage.

Circumstances in *White* v. *McKenzie Electric Cooperative, Inc.,* 225 F. Supp. 940 (D.C.D.N. Dak. 1964) are similar to those in the case at bar. The injured worker, after receiving compensation, filed a third-party complaint for damages against an electric cooperative, and the latter, in turn, filed a third-party complaint against the employer alleging that *it was negligent in that it violated certain safety requirements provided by law and that it owed a duty to third-party plaintiff;* that as it breached such duty the cooperative was entitled to indemnity from the employer; that if found guilty of negligence in the main

action, such negligence was passive while that of the employer was active. The state statute on workmen's compensation provided that employers who comply with the provisions "shall not be liable to respond in damages * * * for injury to or death of any employee" and that "the payment of compensation * * * shall be in lieu of any and all rights of action whatsoever against the employer of the injured * * * employee." It was concluded that the legislative intention inferred from the language of the statute is to provide an exclusive liability; that "the great weight of authority is that such exclusivity provision, in and of itself, eliminates any cause of action on the part of a third party against a complying employer." *The court also added that, furthermore, in this case the allegations do not show that a contractual relationship, either actual or implied, existed between the cooperative and the employer, so, therefore, the doctrine established in Italia Soc. supra, or the one in Ryan, supra, can not be invoked.* The court rejected the "passive-active negligence" theory because "there can be no common liability to the employee when the liability of the employer is governed by the terms of a workmen's compensation act and the liability of the third party is based on common law negligence." *City of Abilene* v. *Jones*, 355 S.W.2d 597 (Tex. 1962); *A. O. Smith Corp.* v. *Associated Sales & Bag Co.*, 113 N.W.2d 562 (Wis. 1962); *Slechta* v. *Great Northern Railway Company*, 189 F. Supp. 699 (D.C.N.D. Iowa 1961), *aff'd, Great Northern Railway Company, supra; Peak Drilling Co., supra.*

In *Slechta, supra*, the claim for indemnification was based on the employer's duty to handle and maintain the railroad box-cars in good condition so they would not cause any damages to the owner thereof, and it was in the handling of a boxcar that the worker who received compensation was injured. The court, although it recog-

nized the right to indemnification when an employer breaches an independent, contractual, or implied duty in law, concluded that under the circumstances previously stated it could not be inferred that such duty existed.

In the instant case it is alleged that negligence on the part of the petitioner caused the accident as a result of which the worker who was compensated was injured, and petitioner in turn alleges that the employer owed it an independent duty of complying with certain safety requirements provided by law and that employer's non-compliance was the cause of the accident, and that any loss sustained by petitioner on that account would be the result of the fault or negligence of the employer. It has not been alleged that such loss, if any, was due to the violation by the employer of any express or implied contractual obligation owed the petitioner. Although the Workmen's Accident Compensation Act as to the employer's immunity against claims by reason of compensable damages sustained by one of its employees is couched in terms somewhat different from those of the Act invoked in *White, supra,* it is not less certain that upon providing that "the right * * * to obtain compensation shall be the only remedy against the employer," it clearly and undoubtedly provided that the employer should not be subject to any other claim arising from damages sustained by the injured worker. Violation of such safety regulation by the employer furnishes the basis to sustain that negligence on the part of the employer was another direct cause of the accident in question, so that actually in the original complaint and in the third-party complaint it is alleged that petitioner and the employer are jointly liable for damages sustained by the workman. We do not consider it sound to recognize the right of indemnity on the basis of differentiation as to quality, extent or degree of negligence of the third party and the employer, inasmuch

as, after all, the origin of such right is the damage caused to the worker and the obligation to indemnify depends exclusively on the comparison of the relations of both parties with respect to damages. Therefore, in recognizing the right of indemnity in such circumstances is an indirect way of imposing liability on the employer, from which the law relieved him.

For the reasons stated the summary judgment rendered by the trial court shall be affirmed.

MR. JUSTICE BLANCO LUGO, Concurring

San Juan, Puerto Rico, January 20, 1965

Eliezer Marcano Torres, a laborer who worked in construction jobs for the insured employer Salvador L. Morales, sustained an accident which was compensated under the Workmen's Aceident Compensation Act, when he came into contact with some high tension electric wires of the lines served by the Water Resources Authority. After having taken the proper steps with the State Insurance Fund and under the provisions of § 31 of Act No. 45 of April 18, 1935, 11 L.P.R.A. § 32, which allows the worker to claim when the accident has happened under circumstances which made a third party liable, he brought action against said public enterprise alleging that the injuries received were due "solely and exclusively" to the negligence of said defendant, consisting of specific affirmative acts.[1]

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[1] Paragraph 13 of the complaint, insofar as pertinent, reads as follows:

> ". . . which was aware that such construction work referred to above was being executed at Munoz Rivera Avenue, corner of Arroyo Street in Hato Rey, P.R., having intervened directly in the approval of the plans for the electrical layout for said construction; and in view of the proximity of said high tension electric wires to the construction work it could reasonably foresee and anticipate the occurrence of an accident like the one which happened in the case at bar; without having given nevertheless, any sort of warning to

Seventeen months afterwards the Authority filed a third-party complaint against Morales, the employer, alleging that he, illegally, imprudently, and negligently, performed or allowed to be performed construction work in the surroundings and vicinity of the installations and lines of the third-party plaintiff, without taking care to prevent any person from coming in contact with such installations and lines, without notifying the Authority in order to allow it to take steps in such situation and in violation of an independent duty, express or implied imposed by law *on the Authority, all of this being the sole and exclusive cause of the accident in this case.*" It further stated that, were it liable to plaintiff, the loss suffered on that account would be the result of the fault or negligence of the third-party defendant, and the latter would be bound to reimburse the Authority the total amount of such *part* of the amount it would have to pay the plaintiff party.

The third-party defendant moved for summary judgment on the ground that in the case of an insured employer, the remedy provided by § 20 of the Workmen's Accident Compensation Act was exclusive, to which plaintiff agreed, thereby admitting that he refused to join him as party defendant. The trial court granted the motion and dismissed the complaint.

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the contractor in charge of the job hereinbefore referred to, or to his laborers, of the danger of such electric wires, nor having taken any precautionary measures to prevent said accident, those wires not being insulated; nor having maintained an appropriate and strict inspection of the aforesaid electric line, knowing, as it did, that such construction work was going on, inasmuch as not only did it approve the electrical plans thereof as mentioned above, but defendant was also supplying power services to the first floor of said building under construction and, in keeping, besides, high tension electric wires hanging from posts in a commercial area, such as the one where the accident took place, where not only is the construction industry in full swing, but also there are some other activities in keeping with the industrial and commercial development of that area."

We find it unnecessary to discuss whether the third-party complaint lies either under the contribution or the indemnization theory, see *Cortijo* v. *P. R. Water Resources Authority*, ... P.R.R. ... (decided December 18, 1964), for no matter how the origin of the liability is sought to be characterized, an examination of the allegations which we have summarized shows that the third-party defendant was joined in the action to answer to the original plaintiff, and that is prohibited by Rule 12.1 of the Rules of Civil Procedure of 1958 now in force, which only permits it where there is any party who is or may be liable to the third-party plaintiff for all or part of the claim of the original plaintiff.[2] The basis of the action brought in effect leads to make

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[2] Under Rule 14(a) of the Rules of Civil Procedure of 1943, the complaint against a third party could be brought when it was alleged that the third-party defendant was or could be liable to the third-party plaintiff or the original plaintiff. In this latter case the action of the defendant had no other effect than an offer to the plaintiff to amend the original complaint for the purpose of joining an additional defendant. If the plaintiff ignored this offer—as it frequently happened so as not to deprive the federal district courts of jurisdiction by reason of difference of citizenship —the dismissal of the third-party complaint was in order because he was not before the court. It is for this reason that I consider erroneous our ruling in *Simonpietri* v. *Blanco; Lippitt & Simonpietri*, 74 P.R.R. 499 (1953), in affirming a judgment of the trial court which held liable the third-party defendant for the payment of damages without the plaintiff having amended his complaint to join him as an additional party defendant. *Cf. Vinas* v. *Pueblo Supermarket of Puerto Rico et al.*, ... P.R.R. ..... (decided September 14, 1962), especially its footnote 5.

In 1946 the corresponding federal rule was amended *for reasons very peculiar to the federal jurisdiction* to eliminate the provision which permitted a third-party complaint where the latter was or could be liable to plaintiff. Upon revising our rules in 1958 we adopted such amendment. It is advisable to re-examine this aspect of our procedural system.

See, in relation to the problem discussed, the report of the Advisory Committee on the Federal Rules of Civil Procedure regarding the 1946 amendment, which appears in 3 MOORE, Federal Practice 413-15 (2d ed.); CLARK, Experience Under the Amendments to the Federal Rules of Civil Procedure, 8 F.R.D. 497 (1949);

the third-party defendant solely and exclusively liable for the damages caused. Liability which may be only enforced by plaintiff Marcano. Procedurally the third-party complaint was not available to the defendant. This in no way prevents him at the proper time adducing and establishing as a defense that he did not commit any negligent act from which liability may ensue. *Cf. Colon* v. *Water Resources Authority*, ... P.R.R. ... (decided May 7, 1964), and that it may only be attributed to the third party.

The judgment will be affirmed.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 317

ANTERO PEREZ RODRIGUEZ,
Petitioner,

v.

ALCOA STEAMSHIP COMPANY, INC.,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

ANTERO PEREZ RODRIGUEZ, *Petitioner,* v. ALCOA STEAMSHIP COMPANY, INC., *Respondent.*	No. 317

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATUTES INVOLVED

1. Constitution, art. IV, § 3, cl. 2—

> "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; . . ."

2. Second Organic Act of 1917, § 7 (Puerto Rican Federal Relations Act, 48 U. S. C. § 747)—

> *Public property transferred*
>
> All property which may have been acquired in Puerto Rico by the United States under the cession of Spain in the treaty of peace entered into on the 10th day of December, 1898, in any public bridges, road houses, water powers, highways, unnavigable

streams and the beds thereof, subterranean waters, mines or minerals under the surface of private lands, all property which at the time of the cession belonged, under the laws of Spain then in force, to the various harbor works boards of Puerto Rico, all the harbor shores, docks, slips, reclaimed lands, and all public lands and buildings not reserved by the United States for public purposes prior to March 2, 1917, is placed under the control of the government of Puerto Rico, to be administered for the benefit of the people of Puerto Rico; and the Legislature of Puerto Rico shall have authority, subject to the limitations imposed upon all its acts, to legislate with respect to all such matters as it may deem advisable. Mar. 2, 1917, c. 145, § 7, 39 Stat. 954; May 17, 1932, c. 190, 47 Stat. 158.

3. Second Organic Act of 1917, § 8 (Puerto Rican Federal Relations Act, 48 U. S. C. § 749)—

"Harbors and navigable waters transferred

The harbor areas and navigable streams and bodies of water and submerged lands underlying the same in and around the island of Puerto Rico and the adjacent islands and waters, owned by the United States on March 2, 1917, and not reserved by the United States for public purposes, are placed under the control of the government of Puerto Rico, to be administered in the same manner and subject to the same limitations as the property enumerated in sections 747 and 748 of this title. All laws of the United States for the protection and improvement of the navigable waters of the United States and the preservation of the interests of navigation and commerce, except so far as the same may be locally in-

applicable, shall apply to said island and waters and to its adjacent islands and waters. Nothing contained in this chapter shall be construed so as to affect or impair in any manner the terms or conditions of any authorizations, permits, or other powers lawfully granted or exercised in or in respect of said waters and submerged lands in and surrounding said island and its adjacent islands by the Secretary of the Army or other authorized officer or agent of the United States prior to March 2, 1917. Mar. 2, 1917 c. 145, § 8, 39 Stat. 954; May 17, 1932, c. 190, 47 Stat. 158; July 26, 1947, c. 343, Title II, § 205 (a), 61 Stat. 501."

4. Second Organic Act of 1917, § 37 (Puerto Rican Federal Relations Act, 48 U. S. C. § 821)—

"Legislative power

The legislative authority shall extend to all matters of a legislative character not locally inapplicable, including power to create, consolidate, and reorganize the municipalities so far as may be necessary, to provide and repeal laws and ordinances therefor; also the power to alter, amend, modify, or repeal any or all laws and ordinances of every character in force in Puerto Rico or municipality or district thereof on March 2, 1917, insofar as such alteration, amendment, modification, or repeal may be consistent with the provisions of this chapter. Mar. 2, 1917, c. 145, § 37, 39 Stat. 964; May 17, 1932, c. 190, 47 Stat. 158."

Statement of the Case

While largely uncontroversial, petitioner, in his "Statement of the Case", and as part of his effort to isolate the Court of Appeals decision from those of this Court and a number of other Courts of Appeals, observes (p. 7) that the Court below "made no references to the decisions of all other federal courts which reach the diametrically opposite result", implying that the Court either overlooked or ignored such decisions.

Apart from the fact that it was interpreting a statute other than that involved in the decisions noted by petitioner, one set in a different body in law,* as will be more fully discussed hereinafter, the Court below did indeed so distinguish (petition p. 33) *Reed* v. *s/s Yaka,* 373 U. S. 410 (1963) upon which all of the decisions appearing on page 7, footnote 2, depend. Moreover, it should have been evident to petitioner that the Court below was not writing on a fresh page of history.

The same innuendo as to ignoring or overlooking, this time its own decisions, appears on pages 8 and 9 of the petition. It should be sufficient to point out that the author of the opinion below was a member of the panel deciding each of these cases noted on page 8, footnote 7, and further is probably one of the leading judicial authorities on the unique status of Puerto Rico, having written two** of the four*** Court of Appeals background decisions dealing

*"Its present commonwealth status is unprecedented in our American history and has no exact counterpart elsewhere in the world". Magruder "The Commonwealth Status of Puerto Rico" 15 Univ. Pitts. Law Review 1, 5.

**_Guerrido_ v. _Alcoa Steamship Company, Inc._, 234 F. 2d 349 (1 Cir. 1956); _Waterman Steamship Corporation_ v. _Rodriguez_, 290 F. 2d 175 (1 Cir. 1961).

***_Lastra_ v. _New York and Porto Rico S.S. Co._, 2 F. 2d 812 (1 Cir. 1924) _Fonseca_ v. _Prann_, 282 F. 2d 153, (1 Cir. 1960). The latter referred to Judge Maris' opinion in _Guerrido_ as a "careful and thorough analysis of the applicable legislation, opinions and historical documents. . . ."

with the interrelationship between the Puerto Rico Workmen's Accident Compensation Act (11 L. P. R. A., § 21) and the maritime law of the United States.

That the Court below did not discuss the exlusiveness of remedy provision of the Puerto Rican Act in terms of an indemnity action under *Ryan Stevedoring Co.* v. *Pan-Atlantic Steamship Corp.*, 350 U. S. 124 (1956) may be disappointing to petitioner, but is evidence only of the lack or relevance of such a discussion to the issue herein. The decisions of this Court* and those of the Supreme Court of Puerto Rico** are in complete accord as to the insulation provided by the exclusiveness of remedy provisions of the respective acts in non-contractual indemnity situations.

Petitioner renders the Court below one final disservice when he asserts that the decision below and *Alcoa Steamship Company, Inc., et al* v. *Velez,* (pet. p. 35) 376 F. 2d 521, decided the same day by the same Court and written by the same judge, are "impossible to reconcile or harmonize" (pet. p. 20). Petitioner erroneously claims that the "sole criterion for a different result in the *Velez* case is that the contract of employment was not entered into in Puerto Rico." A reading of the decision, however, (pet. p. 35-41) shows how it was reached on the basis of a congeries of factors, including ownership outside of Puerto Rico, the temporary nature of the seamen's employment in Puerto Rico, the overall non-residency and employment of the seamen involved, the characteristic concept of the maritime law

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**Ryan Stevedoring Co.* v. *Pan-Atlantic S.S. Corp.* 350 U. S. 124, 130-131 (1956) *Weyerhaeuser S.S. Co.* v. *Nacirema,* 355 U. S. 563, 569 (1958).

***Julia, Pablo, et al, surnamed Cortijo Walker,* v. *Puerto Rico Water Resources Authority,* P. R. R., (Dec. 18, 1964) (petition, p. 58) and *Eliezer Marcano Torres* v. *Puerto Rico Water Resources Authority,* (January 20, 1965), (petition, p. 68).

following the flag and the disruptive effect on both employer and employees of having duplicate and competing systems of recovery for injuries dependent only on locale.

REASONS FOR DENYING THE WRIT

I. THERE HAS NEVER BEEN ANY REQUIREMENT OF FULL CONSTITUTIONAL UNIFORMITY IN PUERTO RICO. WITH NO COMMON DENOMINATOR THERE CAN BE NO CONFLICT BETWEEN THE DECISIONS INTERPRETING THE LONGSHOREMEN'S ACT AND THOSE INTERPRETING THE PUERTO RICAN COMPENSATION ACT.

Almost from the very outset there has been a lack of application to Puerto Rico of Constitutional provisions otherwise uniform in the United States. Thus in *Downes* v. *Bidwell,* 182 U. S. 244, 277, 287, this Court held in 1901 that article 1, section 8 of the Constitution requiring duties to be uniform "throughout the United States" did not pertain to Puerto Rico.

In *Dorr* v. *United States,* 195 U. S. 138, 149 (1904) it was held ". . . that the Constitution does not without legislation, and of its own force, carry such right (trial by jury) to territory (Philippine Islands) * * *", (emphasis added) not made a part of or incorporated into the United States.

Twenty years after *Downes* v. *Bidwell,* supra, this Court said in *Balzac* v. *People of Puerto Rico,* 258 U. S. 298, 304 (1922) that it was "clearly settled" that Constitutional requirements appearing in article 3 of the Constitution and in the 6th and 7th Amendments as to jury trials, did not apply to territory not incorporated into the Union and that Puerto Rico was not so incorporated (p. 305). This Court also went on to answer, forty-five years ago, petitioner's current argument that because citizens of Puerto Rico are

citizens of the United States, their rights must be in every respect identical (p. 307-309)*.

Given this background, the decision of the Circuit Court of Appeals in *Lastra et al* v. *New York and Porto Rico S.S. Co.*, 2 F. 2d 812 (1924) follows in logical sequence. Noting (p. 813 that the Constitution does not apply to Puerto Rico *ex proprio vigore***, the Court found that the admiralty provision of the Constitution (art. 3, § 2) did not therefore extend to Puerto Rico unless Congress had put it there by legislation (p. 813-814).

The subsequent decision in 1956 of *Guerrido* v. *Alcoa Steamship Company Inc.*, 234 F. 2d 349 (1st Circuit), adhered to this view, stating (p. 352):

> "Since Puerto Rico is neither a state of the union nor a territory which has been incorporated into the union preliminary to statehood, it is true that all the provisions of the federal Constitution are not necessarily in force within its borders."

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*More fundamental than petitioner's complaint that his only recovery is under the local compensation act (as it is for all other Puerto Rican employees) is the observation that Puerto Ricans do not vote for their President nor for any of the members of Congress who legislate for them. On the other hand they pay no federal income tax. 48 U. S. C. 734.

In the same vein, petitioner's reference to 48 U. S. C. 737 is misplaced. The purpose thereof is to make sure that *all* citizens of the United States be treated alike in Puerto Rico, since the Constitutional protection as to privileges and immunities (art. IV, § 2, cl. 1) refers only to citizens of states. Nor does the Fourteenth Amendment apply to Puerto Rico. *South Porto Rico Sugar Co.* v. *Buscaglia*, 1 Cir. 154 F. 2d 96, 101 (1946); *Mora* v. *Torres*, 113 F. Supp. 309, 319 (D. C. P. R. 1953), affirmed sub nom. *Mora* v. *Mejias*, 206 F. 2d 377 (1 Cir. 1953).

**In approving a Constitution for Puerto Rico, Congress in House Report 2275 of June 19, 1950 (1950 U. S. Code Congressional Service, 81st Congress, Second Session, p. 2681) distinguished between the then incorporated territories of Alaska and Hawaii, observing that the Constitution and laws of the United States were extended to them (p. 2683) but (p. 2684) "The Constitution has never been extended to Puerto Rico".

In 1960 in *Fonseca* v. *Prann,* 282 F. 2d 153, the Court of Appeals for the First Circuit faced squarely up to whether or not uniformity of the maritime law was required in Puerto Rico. Reviewing *Lastra* and *Guerrido,* the Court found (p. 156) that it was not aware of any Constitutional principle which prevented Congress from giving Puerto Rico jurisdiction over its own waters, fully cognizant (p. 157) that its holding "creates an area of lack of uniformity in the maritime law." and going on to observe that "absolute uniformity in things maritime is not a constitutional requirement nor is it even essential to the proper harmony of the maritime law in its interstate and international relations."*

With the issue of uniformity specifically posed by the Court below, a petition for writ of certiorari was filed in *Fonseca,* urging the same arguments as to uniformity, Fourteenth Amendment and conflicts with this Court's decisions, (See Petition, No. 709 October Term 1960) and this Court declined to intervene, 365 U. S. 860 (1960), on this same issue three years before *Reed* v. *s/s Yaka,* 373 U. S. 410 (1963).

There is nothing new in the petition herein on the issue of uniformity.

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*Some other areas of lack of uniformity in the maritime law are:

(1) application of various State death acts to maritime torts, *m/v Tungus et al* v. *Skovgaard,* 358 U. S. 588 (1959);

(2) the possession of a cause of action for wrongful death for unseaworthiness under state statutes by estates of longshoremen and harbor workers, but not by those of seamen, *Gillespie* v. *U. S. Steel,* 379 U. S. 148 (1964);

(3) reference to various state statutes of limitation by analogy, *McAllister* v. *Magnolia Petroleum Co.,* 357 U. S. 221 (1958);

(4) the regulation of marine insurance by the States, *Wilburn Boat Co.* v. *Firemen's Fund Ins. Co.,* 348 U. S. 310 (1955).

II. IN THE ABSENCE OF A CONSTITUTIONAL MANDATE FOR UNIFORMITY IN PUERTO RICO, CONGRESS, ACTING UNDER ITS CONSTITUTIONAL POWER TO LEGISLATE FOR NATIONAL TERRITORIES, COULD HAVE EXTENDED THE ADMIRALTY PROVISION OF THE CONSTITUTION TO PUERTO RICO, BUT HAS INSTEAD ENABLED PUERTO RICO TO ENACT ITS OWN LEGISLATION FOR LOCAL MARITIME WORKERS.* UNDER THE CIRCUMSTANCES, PETITIONER FAILS TO INFORM THIS COURT HOW OR WHY IT SHOULD INTERVENE.

There is no question that under its power to legislate for territories (art. IV, § 3, cl. 2 of the Constitution), Congress could have made the statutory and general maritime law of the United States fully applicable to Puerto Rico. This power has been recognized in all the leading Court of Appeals decisions on the subject. *Lastra,* p. 813-814; *Guerrido,* p. 355, *Fonseca,* p. 155 and *Waterman* v. *Rodriguez,* p. 179, but as *Lastra* points out (p. 813) "We find no such legislation but the reverse".

This Court has also acknowledged the broad powers given by Congress to Puerto Rico, commenting in *People of Puerto Rico* v. *Shell Company, Ltd.,* 302 U. S. 253, 261-262 (1937) that the aim of the Foraker Act, (April 12, 1900, Chapter 191, 31 Stat. 77) and the Organic Act, (March 2, 1917, Chapter 145, 39 Stat. at L. 951.) was to give "full power of local self-determination" to Puerto Rico. Referring also (p. 263) to "the sweeping character of the congressional grant of power contained in the Foraker Act and the Organic Act of 1917", this Court noted the "general

*Nor does the FELA cover railroad workers in Puerto Rico. Despite its otherwise uniform application as described by this Court in *Second Employer's Liability Cases* 223 U. S. 1, 55 (1912) *New York Central R. R. Co.* v. *Winfield,* 244 U. S. 147 (1917), it has long been established that railroad employees in Puerto Rico are covered by the local compensation act and not by the FELA. *Camunas* v. *Porto Rico Ry. Light & Power Co.,* 272 F. 924 (1 Cir. 1921), Appeal dismissed 260 U. S. 700.

purpose of Congress to confer power upon the government of Puerto Rico to legislate in respect of all local matters is made manifest."

Succeeding enactments have effectively demonstrated how the autonomy of Puerto Rico has been expanded by Congress, in what this Court has termed "the unique historic relationship between the Congress and the Commonwealth of Puerto Rico, . . ." *Katzenbach* v. *Morgan,* 384 U. S. 641, 658 (1966).

The progression can be visualized when it is noted that under the Foraker Act of 1900, 31 Stat. 77, Puerto Ricans were able to elect popularly only the lower house of the territorial legislature and the Resident Commissioner. Under the Organic Act of 1917, 39 Stat. 951, the upper house was brought under the elective procedure and the appointed Governor able to select four of six cabinet members. In 1947, 61 Stat. 770, the Governor of Puerto Rico was permitted to be elected popularly rather than appointed by the President of the United States, and able to appoint all his cabinet members. In 1950, Puerto Ricans were permitted to write their own constitution (48 U. S. C. 731b), which they did after a referendum approving a Constitution, a Constitutional Convention, a referendum approving the Constitution as framed, Congressional and Presidential approval and a proclamation by the Governor of Puerto Rico on July 25, 1952. This Constitution afforded Puerto Rico the largest measure of independence yet accorded it by Congress. See House Report 1832, April 30, 1952 (1952 U. S. Code Cong. Service, 82nd Congress, Second Session pp. 1892-1902), containing also the message of President Truman.

Illustrative of the official attitude of the United States toward Puerto Rico, was a communication by the State Department to the United Nations, characterizing the new

status of Puerto Rico as no longer that of "non-self governing nation", Bulletin of the Department of State, Vol. 28, No. 721, April 20, 1953, p. 584, et seq.

The various House Reports reflect this trend.

House Report No. 455, May 26, 1947 (1947 U. S. Code, Cong. Service, 80th Congress, First Session, p. 1587-1589) seeking to amend the Organic Act to provide for a popular election of the Governor of Puerto Rico, pointed out that the existing Organic Act of 1917 gave the Puerto Rican legislature authority extending "to all matters of a legislative character not locally inapplicable." The Congressional Report went on to state that the people of Puerto Rico had demonstrated a "high degree of political consciousness by the extensive use of the franchise," and that 82.2% of electorate went to the polls in 1944. The report also noted the policy of the United States to encourage the "self-governing ability" of the people of Puerto Rico since 1900.

In 1950, House Report 2275, repeating in substance Senate Report S 3336 (1950 U. S. Code Cong. Service, 81st Congress, Second Session, p. 2681) approved the adoption of their own constitution by the people of Puerto Rico, noting (p. 2682) that this would

> "further implement the self-government principle established by the Congress as the cornerstone and fundamental policy governing the relationship of the United States toward territories over which it has jurisdiction."

The Report commented further (p. 2682) that the people of Puerto Rico were overwhelmingly in favor of having their own constitution, and further that this legislation "constitutes a reflection of the very strong sentiment which

exists in Puerto Rico for a greater measure of local autonomy which this bill represents."

House Report No. 1832, April 30, 1952 (1952 U. S. Code Congressional Service, 82nd Congress, Second Session, p. 1892) commented favorably on the Constitution for Puerto Rico. This was said to constitute (p. 1892) * * * the latest of a series of enactments through which the Federal Government has provided ever increasing self-government in Puerto Rico." The Constitution, it was said (p. 1899) "represents the will of the people of Puerto Rico. Upon its approval the people of Puerto Rico assume full authority and responsibility of local self-government."

President Truman in his message of April 22, 1952, recommending Congressional approval of the Constitution, stated (p. 1902):

> "With its approval, full authority and responsibility for local self-government, will be vested in the people of Puerto Rico. The Commonwealth of Puerto Rico will be a government which is truly by the consent of the governed."

On the very issue of the Puerto Rico Compensation Act, the decisions of the Court of Appeals for the First Circuit (as previously mentioned) specifically acknowledge the powers of Congress with *Fonseca,* saying (282 F. 2d 153, 157):

> "Of course, if Congress sees fit it may supplant the local legislation as it applies to local navigable waters by making the Jones Act and the general maritime law of unseaworthiness specifically applicable in Puerto Rican waters, but it is not our function to do so."

In view of all the foregoing, the failure of Congress to act in this area may be deemed to be advised rather than inadvertent. Indeed, House Report No. 455, May 26, 1947, (1947 U. S. Code Cong. Service, 80th Congress, First Session, p. 1587) pointedly observes that for the thirty years since the Organic Act of 1917 "Congress has never found it necessary to exercise its prerogative of annulling any law enacted by the Puerto Rican legislature".

It must be presumed therefore that when Congress enacted the Organic Act of 1917, and particularly Sections 7, 8 and 37 thereof (continued as 48 U. S. C. 747, 749, 821 in the Puerto Rican Federal Relations Act), Congress gave the Puerto Rican legislature, as was said in *Guerrido,* 234 F. 2d 349 "general legislative power concerning Puerto Rican waters." (p. 354). This interpretation has now survived for the ensuing fifty years in a climate of ever widening autonomy for Puerto Rico.

There being no constitutional requirement for uniformity (No. I) and with Congress having refrained from intervention (No. II), petitioner affords this Court no reason why or how it should do so.

III. THERE BEING NO CONSTITUTIONAL OR CONGRESSIONAL MANDATE FOR UNIFORMITY, THE ONLY REMAINING CONSIDERATION IS AS TO THE CONSTRUCTION OF THE LOCAL COMPENSATION ACT OF PUERTO RICO, AN AREA WHEREIN THIS COURT TRADITIONALLY DEFERS TO THE LOCAL COURTS.

There being no issue requiring constitutional or congressional interpretation, the only remaining question is as to construction of the exclusiveness of remedy provision in the local act, a task reserved for the local courts. While this Court has freely construed the Longshoremen and Harbor

Workers Compensation Act*, it has traditionally deferred to the decisions of the Supreme Court of Puerto Rico in interpreting local Puerto Rican legislation.**

Thus, in discussing the very act in question, the Puerto Rico Workmen's Accident Compensation Act, this Court said in *Bonet* v. *Texas Co.*, 308 U. S. 463, 471 (1940), citing the earlier decision of *Bonet* v. *Yabucoa Sugar Co.*, 306 U. S. 505, 510:

> "Orderly development of the government of Puerto Rico as an integral part of our governmental system is well served by a careful and consistent adherence to the legislative and judicial policy of deferring to the local procedure and tribunals of the Island."

Pointing out that lip-service to this admonition was not enough, this Court went on to say (p. 471):

> "To reverse a judgment of a Puerto Rican tribunal on such a local matter as the interpretation of an act of the local legislature, it would not be sufficient if we or the Circuit Court of Appeals merely disagreed with that interpretation. Nor would it be enough that the Puerto Rican tribunal choose what might seem, on appeal, to be the less reasonable of two possible interpretations."

This is so even if the local rule may be one, as was said in *DeCastro* v. *Board of Commissioners of San Juan*, 322

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*The exclusiveness of remedy provision alone was passed upon in *Nogueira* v. *New York, New Haven and Hartford Railroad Co.*, 281 U. S. 128, 137 (1930); *Crowell* v. *Benson*, 285 U. S. 22, 42 (1932); *Norton* v. *Warner Company*, 321 U. S. 565, 570 (1944); *Swanson* v. *Marra Brothers, Inc.*, 328 U. S. 1 (1946); *Seas Shipping Company* v. *Sieracki*, 328 U. S. 85, 102 (1946); *Ryan Stevedoring Co.* v. *Pan-Atlantic S.S. Corp.*, 350 U. S. 124, 125, 129, 140 (1956); *Reed* v. *s/s Yaka*, 373 U. S. 410, 414-415 (1963); *Jackson* v. *Lykes Brothers Steamship Co., Inc.*, 386 U. S. 731 (1967).

**Indeed, this Court has, in at least one context, agreed with the local interpretation of the Puerto Rican Act as to exclusiveness. See *Guzman* v. *Pichirilo*, 369 U. S. 698, 699 (footnote 1) (1962).

U. S. 451, 458-459 (1944), which is "out of harmony with our traditional system of law and statutory construction." (and further p. 455):

> "Hence we have emphasized as a cardinal principle of review in such cases that the mere fact that our own system of law and statutory construction would call for the application of one rule to a given set of facts, does not preclude the adoption of a different one by the insular courts."

The rule of the *Bonet* and *DeCastro* cases was reaffirmed in *In Re Sawyer*, 360 U. S. 622, 640 (1959) when this Court said:

> "Of course this Court and the Courts of Appeal must give the Territorial Courts freedom in developing principles of local law and in interpreting local legislation."

(a) The Supreme Court of Puerto Rico has consistently and without exception deemed its Workmen's Accident Compensation Act to be the exclusive remedy of all employees (including local seamen) against their employers who comply with the Act.

In support of the foregoing, see *United Porto Rican Sugar Co.* v. *District Court,* 44 P. R. R. 904, 906-907 (1933) (local seaman) and *Onnia* v. *The Texas Co.,* 64 P. R. R. 497, 502 (1945). In *DeJesus* v. *Osorio, et al.,* 65 P. R. R. 601 (1946), the Court not only adhered to the exclusive provisions of the Puerto Rican Compensation Act, but went on to define the purposes of the act, and construe it as drawn (p 604):

> "We cannot agree with the appellant. The purposes sought by workmen's compensation acts, such as ours, comprise not only the enlargement of the

rights of the workman, but also the limitation of the employer's liability. While on the one hand the employer, or his insurer, is compelled to pay compensation without reference to any fault or negligence on his part, and the defense of a contributory negligence or negligence of a fellow servant and other defenses are eliminated, on the other hand, the amount of the compensation is limited and in case of death, compensation is allowed only to those who were dependent for support on the workman. It is therefore perfectly consistent with those purposes to eliminate, as our statute expressly did, all remedies against the employer based on a labor accident, except those expressly provided by the statute. If the result is, as in the case at bar, that certain persons are deprived of the right to compensation, in case of death, which they had before the approval of the act, we can not say that that result was not within the intention of the lawmaker, particularly in view of the fact that persons not dependent on the deceased workman are the only ones deprived of such right."

On December 18, 1963, some seven months after the decision of this Court in *Reed* v. *s/s Yaka,* the Supreme Court of Puerto Rico decided *Inter Island Shipping Corporation* v. *Industrial Commission of Puerto Rico,* P. R. R. December 18, 1963 (petition p. 42) and in a comprehensive opinion, traced the history and legislative background of the local compensation act, reviewed the *Lastra, Guerrido, Fonseca and Waterman* v. *Rodriguez* decisions, and found that the Puerto Rican Workmen's Compensation Act made the general maritime law of the United States "locally inapplicable" and under the circumstances was therefore the exclusive remedy of the injured seaman.

More recent decisions of the Supreme Court of Puerto Rico underscore its philosophy of approving the existing unified system of compulsory compensation administered under the aegis of the government for the benefit of the employee to the complete exclusion of any other redress against his employer who complies with the Act. This was expressed in *Julia, Pablo, et al. surnamed Cortijo Walker* v. *Puerto Rico Water Resources Authority,* ..... P. R. R. ..... (December 18, 1964) (petition p. 58, 61-62) and also *Marcano Torres* v. *Puerto Rico Water Resources Authority,* ..... P. R. R. ..... (January 25, 1965) (petition p. 68). For example, the Court said in *Julia, Pablo et al.* (petition p. 62) that originally there were exceptions to the exclusiveness of remedy provision when the injuries were caused by an illegal act or criminal negligence. These were eliminated in 1935, so that presently the only exception is the uninsured employer, and, as the Court, the same panel as decided the *Inter Island* case, supra, one year before, said "This is the only case."

While agreeing (p. 48) that it was "manifestly undesirable" that a local statute be first construed in a Federal Court, the Circuit Court of Appeals in *Camunas* v. *New York and Porto Rico Steamship Co.,* 260 F. 40, 55 (1919) nevertheless went on to construe the original compensation act and find that there was not even "reasonable doubt that the Porto Rican Legislature intended to impose, upon employers and employees alike, the compensation theory in substitution for the negligence theory."

It is evident that Puerto Rican policy (petition, p. 62) favors the certainty of workmen's compensation over the hazards of damage actions as the most salutory way of benefiting workmen injured in the course of their employ-

ment and, as this Court observed in *Norton* v. *Warner Company,* 321 U. S. 565, 571 (1944) "Whether they (damage actions) are more desirable than system of compensation is not for us to determine." (parenthetical reference supplied)

(b) Apart from the power of the Puerto Rican legislature to pass, and that of the Puerto Rican Supreme Court to construe its own laws, where the same act applies to all employees it would be unfair and unjust to permit a certain form of employee (longshoreman or harbor worker) to both sue his employer for damages and collect compensation, while all others have only their compensation remedy.

(1) Longshoremen vis a vis railroad workers.

Following *Camunas et al* v. *Porto Rico Ry. Light and Power Co.,* 272 F. 924 (CCA 1st 1921), railroad employees were covered by the Porto Rico Compensation Act and not by the FELA. They may not, therefore, sue their employer. As the Court said (p. 929), "We can conceive of no reason why Congress should desire to put employees of Porto Rican railroads in a class by themselves so far as remedy for accidents is concerned." This decision has remained untouched by Congress for forty-six years. It also furnishes a separate and distinct impetus for not applying the Jones Act, 46 USC 688, which incorporates the FELA, in Puerto Rico.

(2) Longshoremen vis a vis seamen.

It has been held in *United Porto Rican Sugar Co.* v. *District Court* 44 P. R. R. 904, 906-907 (1933); *Fonseca* v. *Prann,* 282 F. 2d 153, cert. den. 365 U. S. 860; *Inter Island Shipping Corporation* v. *Industrial Commission of Puerto Rico,* ..... P. R. R. ..... (December 18,

1963) (petition p. 42) and finally *Alcoa Steamship Company, et al* v. *Ulpiano Velez,* 376 F. 2d 521 (1st Cir., 1967) (petition p. 35), that local seamen are covered by the compensation act and not by the Jones Act or the general maritime law.

Thus in Puerto Rico, the longshoreman, who asserts certain derivative rights because of his identity as a seaman, would, following petitioner's argument, have greater rights than local seamen. This would not be true under the Longshoremen's Act, 33 U. S. C. 902 (3) where seamen in the traditional sense are excluded from coverage. Their ancient remedies are preserved to them as it was apparently their wish that this would be so. See *Norton* v. *Warner Corp.,* 321 U. S. 565, 570 (1944). Consequently in the *Reed* and *Jackson* cases, this Court was only keeping longshoremen employees of shipowners abreast with Jones Act seamen employees, whereas under the Puerto Rican Act, as construed by petitioner, local longshoremen would have rights superior to those of local seamen,* as was indeed demonstrated prior to the decision below.

Further, with the local seaman employee in Puerto Rico, not having any "traditional" seamen's rights by reason of the exclusiveness of the compensation act, the longshoreman employee is not really being deprived of anything when he is hired directly by the shipowner as the seaman is.

(3) Employee longshoremen vis a vis non-employee longshoremen.

Avoiding any comparison between local seamen and local longshoremen in Puerto Rico, petitioner chooses instead to compare longshoremen employed by shipowners as

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*Compare *Santiago* v. *Hermanos,* 255 F. Supp. 932 (Dist. Ct. P. R.—1966—longshoreman) with *Arroyo* v. *m/v Island Queen II,* 259 F. Supp. 15 (Dist. Ct. P. R.—1966—seaman).

against longshoremen employed by independent stevedores, with the latter having a third-party action, as well as a remedy in compensation. All petitioner has done, however, is point to an ever narrowing exception to the exclusiveness of remedy provision of the Puerto Rican Act. While the longshoreman who is suing a party other than his direct employer has an additional remedy, there is now authority construing the Puerto Rican Act, *Musick* v. *Puerto Rico Telephone Company*, 357 F. 2d 603 (1st Cir. 1966) whereby third-party actions are more circumscribed by the expanded definition of who is employer (or per contra restricted definition of third-party) than in the Longshoremen and Harbor Worker's Compensation Act. It follows that except in maritime employment, there may not be any third-party liability in Puerto Rico to anyone other than strangers to the employment relationship.

There is nothing novel* about such a construction for as *Larson* points out in his *Workmen's Compensation Law*, Volume 2, Section 72.31, p. 175, forty-one states have "statutory-employer" or "contractor-under" statutes insulating the general or principal contractor from third-party suits when the work done by the sub-contractor "is part of the business, trade or occupation of the principal contractor".

Given the foregoing and the *Musick* case, there is no reason why the shipowner in Puerto Rico should not in the future fit the broadened definition of "employer" of longshoremen, immediately employed by others, or why the shipowner is any less an employer of the stevedore's longshoremen than was the Telephone Company of Musick. Indeed, the whole history of this Court's decisions not only minimizes the intervening direct employment by a stevedoring

*See for example *Evans* v. *Newport News Shipbuilding & Dry Dock Company*, 361 F. 2d 364 (4 Cir. 1966).

contractor, but also emphatically holds the longshoremen to be in the service of the ship and performing the shipowner's work,

> *Seas Shipping Co. Inc.* v. *Sieracki*, 328 U. S. 85, 94-97-(1946); *Pope & Talbot, Inc.* v. *Hawn*, 346 U. S. 406, 413 (1953); *Crumady* v. *The Joachim Hendrik Fisser*, 358 U. S. 423, 426-427 (1959); *Reed* v. *s/s Yaka*, 373 U. S. 410, 414-415 (1963).

While there are no present decisions in Puerto Rico it might be said that a longshoreman or other harbor worker, employed by an independent contractor, now stands alone, the sole type of employee within the industrial scheme entitled to sue his "employer" in the expanded sense. If *Musick* be logically followed, however, he should not occupy this role for long and all employees in Puerto Rico would then be in the same position of being able to sue as third-parties only those who are strangers to the employment relationship. All will be dealt with even-handedly, all would be entitled only to their compensation remedies against their employer—as broadly defined.

While petitioner prefers to identify himself with mainland longshoremen, it would seem more fitting that he be asked why he should be entitled to more than all sugar workers and factory employees in Puerto Rico, all railroad employees in Puerto Rico, and all local Jones Act seamen employees in Puerto Rico?

(4) What petitioner advocates would, under the unique provisions of the Puerto Rican Act, permit him to keep not only his compensation but also damages in his third-party suit.

Unlike his counterpart in the states, the Puerto Rican longshoreman, once ninety days elapses after the final decision of the manager of the State Insurance Fund, has

no obligation to reimburse the Fund out of any action thereafter brought by him, 11 L. P. R. § 32, *Waterman Steamship Corp.* v. *Rodriquez*, 290 F 2d 175, 178 (1 Cir 1961), and correspondingly the State Fund has no obligation to credit or reimburse the employer out of the proceeds of any third-party recovery. Petitioner does not dispute this proposition*.

Under the Longshoremen's Act, however, it has been held that the employer and by subrogation of its carrier, has a lien on the proceeds of any damage action recovery; *The Etna*, 138 F. 2d 37, 41 (3 Cir. 1943); *Fontana* v. *Grace Line*, 205 F. 2d 151 (2 Cir. 1953), affirming 106 F. Supp. 461 (1952); *Grace Line Inc.* v. *Kanton*, 366 F. 2d 510, 511 (9 Cir. 1966).

Such a result would undermine the very *quid pro quo rationale* supporting the constitutionality of compensation acts. See *New York Central* v. *White*, 243 U. S. 188, 201-202 (1917); *Mountain Timber Company* v. *Washington*, 243 U. S. 219, 234, 236 (1917) and both opinions in *Ryan Stevedoring Co. v. Pan-Atlantic S.S. Corp.*, 350 U. S. 124, 129, 140 (1956).

Larson, in his work on *Workmen's Compensation Law*, says (Volume 2, p. 166, § 71.20):

> "It is equally elementary that the claimant should not be allowed to keep the entire amount both of his compensation award and of his common-law damage recovery."

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*Petitioners brief below (p. 21):

"Whereas the injured longshoreman in the States may have to reimburse the insurance carrier for any payments received out of an award or settlement, the longshoreman in Puerto Rico need reimburse his employer's carrier (the State Insurance Fund), only if the Fund elects to join in the suit."

Assuming this Court believes itself free to construe the Puerto Rican Act, respondent submits that it must then ask itself whether, in light of the foregoing (1-4), it can repeat in Puerto Rico the language of *Jackson* v. *Lykes Brothers,* 386 U. S. 731, 735 (1967):

> "We cannot hold that Congress (the Puerto Rican Legislature) intended any such incongruous, absurd and unjust result in passing this Act." (parenthetical reference supplied)

IV. WHERE THERE IS NO IN PERSONAM LIABILITY ON THE PART OF RESPONDENT BY REASON OF A STATUTORY IMMUNITY OR BAR, THERE CAN BE NO IN REM LIABILITY OF RESPONDENT'S VESSEL.

Whatever other distinctions may exist between in personam and in rem liability, it would be meaningless to afford an employer in personam insulation under an exclusiveness of remedy provision and at the same time expose his property to seizure to satisfy an in rem liability.

A literal reading of the statute itself (11 L. P. R. A., § 21) that compensation "shall be the only remedy against the employer; * * *", any meaningful construction of this language, and finally the decisions of this Court militate against the existence of any dichotomy of liability as urged by petitioner.

This Court has long held that where an in personam immunity or bar exists, there can be no in rem liability. While petitioner brushes off the limitation of liability decisions, *The City of Norwich,* 118 U. S. 468 (1886), *Consumers Imp. Co.* v. *Kabushiki K. K. Zosenjo,* 320 U. S. 249 (1943), they comprise the very class of cases, as the within litigation, which have to do with the statutory shielding of the shipowner from in personam liability, and the effect thereof on in rem liability of the shipowner's vessels.

In *The City of Norwich* this Court stated (p. 503):

> "To say that an owner is not liable, but that his vessel is liable, seems to us like talking in riddles. A man's liability for a demand against him is measured by the amount of property that may be taken from him to satisfy that demand. In the matter of liability, a man and his property cannot be separated, * * *"
>
> " * * * but the liability of the thing is so exactly the owner's liability, that a discharge or pardon extended to him will operate as a release of his property."

In 1901, in *The Queen of the Pacific,* 180 U. S. 49, this Court held that a stipulation in a bill of lading requiring that all claims against the shipowner be brought within a certain time, was also a bar against an action in rem against the vessel after said time had expired.

In the *Consumers Import Co.* case, supra, this Court granted certiorari expressly limited to the question (p. 251) "Does the Fire Statute extinguish maritime liens for cargo damage, or is its operation confined to in personam liability only?" in order to resolve a conflict between Circuits. Following the language in *The City of Norwich,* this Court referred again to the riddle of exonerating the shipowner while holding his property liable, saying (p. 253):

> "The riddle after more than half a century repeated to us in different contexts does not appear to us to have improved with age."

* * *

(pp. 253-254)

> "Congress has said that the owner shall not 'answer for' this loss in question. Claimant says this means in effect that he shall answer only with his ship. But the owner would never answer for a loss except with his property, since execution against the body was not at any time in legislative contemplation. There could be no practical exoneration of the owner that did not at the same time exempt his property. If the owner by statute is told that he need not 'make good' to the shipper, how may we say that he shall give up his ship for that very purpose? It seems to us that Congress has, with the exception stated in the Act, extinguished fire claims as an incident of contracts of carriage, and that no fiction as to separate personality of the ship may revive them."

The above language from the *City of Norwich* and *Consumers* cases was quoted in *Continental Grain Co.* v. *Barge, FBL-585,* 364 U. S. 19, 24 (1960) wherein this Court subscribed (p. 24) to "the common-sense approach" of these decisions, thus maintaining a consistent line of authority during a period of 74 years.

If Title 11 L. P. R. A., § 21, insulates the employer from in personam liability, to have any "common-sense" meaning, it must do so as well for in rem liability. As the above decisions of this Court demonstrate, the employer's in personam protection will be illusory if he can at the same time be deprived of his property.

CONCLUSION

FOR THE FOREGOING REASONS IT IS RESPECTFULLY SUBMITTED THAT THE PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT BE DENIED.

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